

# Large Filing Separator Sheet

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Description of Document: Application

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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*Name of Applicant*

- f) If the Guarantor has not been incorporated or otherwise formed under the laws of the United States, the Guarantor is asked to provide in addition to a)-f) above:
- i. A legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the Guaranty will become the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed.
  - ii. Any additional information that the Guarantor wishes to give that could provide comparable credit assurances to those that are provided by other Guarantors that have been incorporated or otherwise formed under the laws of the United States.

An Applicant whose Guarantor has not been incorporated or otherwise formed under the laws of the United States and that does not provide this information or any information that could provide comparable assurances of creditworthiness will be required to post the maximum Pre-Bid Security with its Part 2 Application.

Further, if an Applicant with such a Guarantor becomes an SSO Supplier, the Guarantor will be required to submit additional documents as detailed in Article 5 of the Master SSO Supply Agreement, including:

- A legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that this Guaranty is, or upon the completion of execution formalities will become, the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed;
- The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the person executing the Guaranty on behalf of the Guarantor has the authority to execute the Guaranty and that the governing board of such Guarantor has approved the execution of the Guaranty; and
- The sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Guarantor has been authorized by its governing board to enter into agreements of the same type as the Guaranty.

## Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

**Is the Guarantor and/or its parent (if applicable):**

	Guarantor		Parent	
	Yes	No	Yes	No
Operating under federal bankruptcy laws or bankruptcy laws in any jurisdiction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to pending litigation or regulatory proceedings (in state court, or in federal court, or from regulatory agencies, or in any other jurisdiction) which could materially impact the Guarantor's and/or parent's financial condition?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Subject to collection lawsuits or outstanding judgments that could impact solvency?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

**Please provide a statement disclosing any existing, pending or past adverse rulings, judgments, litigation, contingent liabilities, revocations of authority, administrative, regulatory (State, FERC, SEC or DOJ) investigations and any other matters relating to financial or operational status for the past three years that arise from the sale of electricity or natural gas, or that materially affect current financial or operational status of the Guarantor.**

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Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

**1.9 Additional Certifications**

The CBP Bidding Rules, the Master SSO Supply Agreement, the Communications Protocols, and the Information Website include important information that an Applicant should understand prior to participating in the CBP.

- a) Please certify that you have read the CBP Bidding Rules and that you will comply with these rules.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

- b) Please certify that you have read the Master SSO Supply Agreement and that you accept its terms. Please also certify that if you become a winning Bidder, you will execute the Master SSO Supply Agreement within three (3) Business Days following the close of the auction:

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

- c) Please certify that if you qualify to participate in the CBP, you will not disclose at any time information regarding the list of Qualified Bidders in the CBP, including but not limited to the number of Qualified Bidders, the identity of any one of the Qualified Bidders (including yourself), or the fact that an entity has not qualified for participation in the CBP. Further, please certify that you will destroy any document distributed by the Auction Manager that lists the Qualified Bidders within five (5) days of the close of the bidding, or earlier if so instructed by the Auction Manager.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

- d) No Qualified Bidder in the CBP shall substitute another party, transfer its rights to another party, or otherwise assign its status as a Qualified Bidder to another party. Any such substitutions, transfers, or assignments shall be null and void and will result in the exclusion of the Qualified Bidder from the CBP. Please certify that you agree to the limitation set forth in this paragraph.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

The Bidding Rules and Communications Protocols include restrictions on the disclosure of Confidential Information. For purposes of the following certifications, the definition of Confidential Information relative to bidding strategy is defined according to Section 11.2 of the Bidding Rules:

- e) Please certify that you agree not to disclose any Confidential Information relative to bidding strategy to any party that may have an effect on the participation of another bidder, prospective bidder, or on any of the bids that another bidder would be willing to submit.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

- f) Please certify that, to the extent Confidential Information relative to bidding strategy is disclosed within your organization or to a third party, you will ensure that sufficient precautions are taken to ensure that such Confidential Information is not made public or made available to another Bidder. Such precautions include, but are not limited to confidentiality agreements, non-disclosure agreements, firewalls, and other contractual or structural protections that would maintain the confidential nature of a Bidder's bidding strategy.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

If unable to make the certifications requested above please identify the nature of your need to disclose Confidential Information without sufficient precautions to ensure that such Confidential Information is not made public or made available to another bidder.

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

#### **1.10 Alternate Guaranty Forms**

A prospective SSO Supplier that wishes to rely on a Guarantor can use the standard form of guaranty (Attachment D to the Master SSO Supply Agreement) and be assured that the standard form of guaranty is acceptable to Duke Energy Ohio. Alternatively, Duke Energy Ohio will consider alternate forms of guaranty if they are submitted with this Part 1 Application. Also, you may submit an alternate form of guaranty that was previously approved.

**The Alternate Guaranty Form must satisfy the requirements specified in Appendix B.**

Please check here ☐ if this section does not apply to you because you are not submitting an alternate form of guaranty and proceed to the next section. Otherwise please read Appendix B and complete this section.

The Authorized Representative acknowledges by signing below that he/she has read the requirements of Appendix B and that he/she believes that the proposed Alternate Guaranty Form complies with these requirements:

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Please check below to show that you are including all required documents.

- ☐ The proposed form of alternate guaranty;
- ☐ Certification that the alternate guaranty has been in general use by the Applicant in its ordinary course of business over the past twelve months;
- ☐ An enforceability opinion with respect to the alternate form of guaranty from counsel; and
- ☐ Previously approved alternate form of guaranty.



Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
Name of Applicant

### 1.11 Bidding Agreements

**Please note that Duke Energy Ohio will not review information provided in this section.**

Please check here ☐ if you will be bidding independently and not as a party to any bidding agreement with another party or through any other arrangement involving joint or coordinated bidding with any other party and proceed to the next section.

Otherwise, please indicate below whether you are a party to or a part of a bidding agreement, a joint venture, a bidding consortium, or other arrangements for purposes of participating in the CBP or pertaining to bidding in the CBP. Please also provide the names of the other parties to the bidding agreement or other arrangement.

Other parties to the arrangement:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ Bidding Agreement

☐ Bidding Consortium

☐ Joint Venture

☐ Other (define) \_\_\_\_\_

If you are part of a bidding agreement, bidding consortium or joint venture, you must nominate a single party to the bidding agreement, bidding consortium or joint venture to fulfill the creditworthiness requirements. This party may have a Guarantor. Please indicate below which party from the bidding agreement, bidding consortium, or joint venture will be fulfilling the creditworthiness requirements:

Name of the single Party fulfilling the creditworthiness requirements:

\_\_\_\_\_

The Authorized Representative of the party named above must sign here to acknowledge the fact that this party has agreed to fulfill the creditworthiness requirements:

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

## Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

### 1.12 Justification of Omissions

**If you are unable to provide all documents or all information requested in this Part 1 Application, please justify fully any omissions in the space provided below.**

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
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Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

#### **Appendix A – Enclosures to the Part 1 Application**

This is a checklist of documents to be enclosed with this Part 1 Application. Please submit only one copy of required supporting documents to the application unless noted otherwise.

- ☐ **A copy** of the completed Part 1 Application with original signatures and original notarized signatures of Sections 1.2, 1.3 and 1.4 *[Instructions Part 1]*

For the Applicant:

- ☐ A copy of the signature page of the applicable PJM Agreements as that term is defined in the Master SSO Supply Agreement *[Section 1.6]*
- ☐ If the Applicant is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.7]*
- ☐ If the Applicant is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.7]*
- ☐ If the Applicant is not an SEC registrant, or if the Applicant is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Applicant's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition *[Section 1.7]*
- ☐ Senior unsecured debt ratings or, if unavailable, corporate or issuer ratings *[Section 1.7]*
- ☐ If the Applicant has not been incorporated or otherwise formed under the laws of the United States, (i) a legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Applicant is incorporated or otherwise formed that the Master SSO Supply Agreement will become the binding obligation of the Applicant in the jurisdiction in which it has been incorporated or otherwise formed, and (ii) any additional information that the Applicant wishes to give that could provide comparable credit assurances to those that are provided by other Applicants that have at least two credit ratings from accepted credit ratings agencies. *[Section 1.7]*

**Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions**

***Name of Applicant*** \_\_\_\_\_

## Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

**For the Guarantor:**

- ☐ If the Guarantor is an SEC registrant, provide the Form 10-K most recently filed with the SEC. If unavailable, please provide most recent audited annual financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.8]*
- ☐ If the Guarantor is an SEC registrant, provide the Form 10-Q most recently filed with the SEC. If unavailable, please provide most recent quarterly financial information (including a balance sheet, income statement, cash flow statement, and related footnotes) *[Section 1.8]*
- ☐ If the Guarantor is not an SEC registrant, or if the Guarantor is an SEC registrant and both the Form 10-K and Form 10-Q most recently filed with the SEC are not available, please provide most recent annual (audited) and quarterly financial data, including related footnotes, accompanied by an attestation by the Guarantor's Chief Financial Officer that the information submitted is true, correct and a fair representation of the Applicant's financial condition *[Section 1.8]*
- ☐ Senior unsecured debt ratings or, if unavailable, corporate or issuer ratings *[Section 1.8]*
- ☐ If the Guarantor has not been incorporated or otherwise formed under the laws of the United States, (i) a legal opinion acceptable to Duke Energy Ohio of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is incorporated or otherwise formed that the Guaranty will become the binding obligation of the Guarantor in the jurisdiction in which it has been incorporated or otherwise formed, and (ii) any additional information that the Guarantor wishes to give about the Guarantor's financial standing that could provide comparable credit assurances to those that are provided by other Guarantors that have at least two credit ratings from accepted credit rating agencies. *[Section 1.8]*

**If the Applicant is proposing an Alternate Guaranty Form:**

- ☐ Proposed form of alternate guaranty [Section 1.10]
- ☐ Certification that the alternate guaranty has been in general use by the Applicant in its ordinary course of business over the past twelve months [Section 1.10]
- ☐ An enforceability opinion with respect to the alternate form of guaranty from counsel [Section 1.10]

### Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

☐ Previously approved alternate form of guaranty. [Section 1.10]

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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*Name of Applicant*

**Appendix B – Alternate Guaranty Forms (Optional)**

The **criteria** used to review the alternate form of guaranty are as follows:

1. The alternate guaranty must be a financial guaranty; performance guarantees are not acceptable.
2. The alternate guaranty must be an unconditional guaranty of payment of all amounts due by the SSO Supplier to Duke Energy Ohio under the Master SSO Supply Agreement. The Master SSO Supply Agreement must be expressly identified and the satisfaction of obligations through performance may not be authorized.
3. The alternate guaranty may be terminated upon not less than thirty (30) days advance written notice to Duke Energy Ohio and termination shall not discharge liabilities and obligations of the Guarantor that have been incurred before the effective date of the termination.
4. The alternate guaranty must be accompanied by a certification that this form of guaranty, subject to changes needed to conform to the specific requirements of Duke Energy Ohio, has been in general use by the submitting party in its ordinary course of business over the past twelve months.
5. The alternate guaranty must be a guaranty of payment and not of collection.
6. Assignment of the alternate guaranty shall not be permitted except with the prior written consent of Duke Energy Ohio.
7. The Applicant must provide an enforceability opinion with respect to the alternate form of guaranty from its counsel. The accompanying enforceability opinion must be from a law firm of national (i.e., United States) standing, must not be weaker than would be industry norm and must contain only those qualifications that would be typical. The opinion shall name Duke Energy Ohio and explicitly state that Duke Energy Ohio is entitled to rely on the opinion.

The alternate forms of guaranty will be reviewed in accordance with the following process:

- Upon receipt of the Part 1 Application, the Auction Manager will redact the proposed alternate form of guaranty to remove any information identifying the Applicant. The Auction Manager will then forward the redacted version to a credit and legal representative of Duke Energy Ohio.
- The credit representative and legal representative will determine whether the alternate form of guaranty provides sufficient assurances of payment, taking into account the following considerations:

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

---

*Name of Applicant*

- (i) whether the alternate form of guaranty conforms with the specific requirements identified by Duke Energy Ohio (listed above);
  - (ii) whether the alternate form of guaranty provides substantially similar credit protections to the credit protections provided to Duke Energy Ohio by the standard form of guaranty; and
  - (iii) whether the alternate form of guaranty includes defenses in favor of the Guarantor not found in the standard form of guaranty. The Duke Energy Ohio representative may also identify specific changes that would permit the alternate form of guaranty to be acceptable, if such changes are of a limited nature.
- The credit representative and legal representative shall inform the Auction Manager of its decision no later than seven (7) Business Days following the Part 1 Application Due Date.
  - Upon receipt of the Duke Energy Ohio's decision, the Auction Manager will notify the Applicant of Duke Energy Ohio's decision. The Duke Energy Ohio's decision will either state:
    - (i) The proposed alternate guaranty is acceptable to Duke Energy Ohio in the form in which it was submitted.
    - (ii) The proposed alternate guaranty is not acceptable to Duke Energy Ohio in the form in which it was submitted, but would be acceptable subject to specific changes of a minor nature. The correspondence from the Auction Manager will set forth the required changes.
    - (iii) The proposed alternate guaranty is not acceptable to Duke Energy Ohio.
  - If specific changes are required to the proposed alternate guaranty, the Applicant will be required to resubmit the alternate guaranty form with changes identified by Duke Energy Ohio on the Business Day following the Business Day during which the Auction Manager notified the Applicant of the Duke Energy Ohio's decision. No later than three (3) Business Days after the Applicant's resubmission, the Auction Manager will notify the Applicant of Duke Energy Ohio's final decision.

A potential bidder that had secured approval for an alternate form of guaranty for a prior Duke Energy Ohio CBP and that wishes to use the same alternate form of guaranty can renew this approval for any CBP by submitting:

1. The alternate form of guaranty for the prior Duke Energy Ohio CBP;
2. The enforceability opinion for the prior Duke Energy Ohio CBP;



**Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions**

***Name of Applicant***

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- 3. A certification that the text of the alternate form of guaranty is exactly the same as the alternate form of guaranty that had been previously approved for the prior Duke Energy Ohio CBP;**
- 4. A certification that the text of the enforceability opinion is the same as the enforceability opinion that had been previously approved for the prior Duke Energy Ohio CBP.**

**If a potential bidder submits the materials as specified above, the alternate form of guaranty will be approved. If a potential bidder had secured approval for an alternate form of guaranty for a prior Duke Energy Ohio CBP but is unable to provide the materials as specified above, the potential bidder must resubmit the alternate form of guaranty and all supporting documentation as specified in the Minimum Requirements for the Alternate Form of Guaranty section above and these materials will be re-evaluated according to the criteria set forth in this document.**

**All proposing parties that become Qualified Bidders under the Part 1 Application process, but whose alternate guaranty are rejected by Duke Energy Ohio, are required to submit with their Part 2 Application a supplemental certification that the Applicant unconditionally accepts all terms and conditions of the Master SSO Supply Agreement.**

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

**Appendix C – Draft Letter of Credit for the Pre-Bid Security (Optional)**

The standard form of the Letter of Credit presented in this section is in a form acceptable to Duke Energy Ohio and will be posted to the Information Website. However, an Applicant has the option to submit a draft Letter of Credit clearly identifying proposed changes in an electronic, redlined version by email with their Part 1 Application to [duke-energyauctionmanager@crai.com](mailto:duke-energyauctionmanager@crai.com).

Duke Energy Ohio will assess, in its sole and exclusive discretion, whether such modifications are acceptable. The Qualified Bidder, in its Part 2 Application, must provide the required executed Letter of Credit that either uses the standard form or incorporates only those modifications to the standard form accepted by Duke Energy Ohio upon review of the Part 1 Application. The draft Letter of Credit will be reviewed in accordance with the following process:

- Upon receipt of the Part 1 Application, the Auction Manager will redact the draft Letter of Credit to remove any information identifying the Applicant. The Auction Manager will then forward the redacted version to a credit and legal representative of Duke Energy Ohio.
- The credit and legal representative will determine whether such modifications are acceptable. The credit and legal representative shall inform the Auction Manager of its decision no later than seven (7) Business Days following the Part 1 Application Due Date.
- Upon receipt of the Duke Energy Ohio's' decision, the Auction Manager will notify the Applicant of Duke Energy Ohio's decision. Duke Energy Ohio's decision will either state:
  - The draft Letter of Credit is acceptable to Duke Energy Ohio in the form in which it was submitted.
  - The draft of Letter of Credit is not acceptable to Duke Energy Ohio in the form in which it was submitted, but would be acceptable subject to specific changes of a minor nature. The correspondence from the Auction Manager will set forth the required changes.
  - The draft Letter of Credit is not acceptable to Duke Energy Ohio.
- If specific changes are required to the draft Letter of Credit, the Applicant will be required to resubmit the draft Letter of Credit with changes identified by Duke Energy Ohio on the Business Day following the Business Day during which the Auction Manager notified the Applicant of the Duke Energy Ohio's decision. No

Part 1 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

later than three (3) Business Days after the Applicant's resubmission, the Auction Manager will notify the Applicant of Duke Energy Ohio's final decision.

***End of Part 1 Application***

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**Sample**

**Pre-Bid Security - Letter of Credit**

\_\_\_\_\_ [Date]

Letter of Credit No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

1. We hereby establish in your favor this irrevocable Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ ("the Bidder"), in the amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ [location] and expiring on \_\_\_\_\_ [date] which is 60 calendar days from date of issuance, unless terminated earlier in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Bidder, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 11 hereof. This Letter of Credit may be drawn by presenting a certificate from you stating that the Bidder:
  - a) "has made a material omission or misrepresentation in the Part 1 Application or the Part 2 Application submitted by the Bidder to participate in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement"; or
  - b) "has violated the bidding rules for Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement"; or
  - c) "has a winning bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement and has failed to execute the Master Standard Service Offer Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master Standard Service Offer Supply Agreement)"; or
  - d) "has a winning bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement and has failed to meet the creditworthiness requirements of the Master Standard Service Offer Supply Agreement within three (3) business days of the closing of the Solicitation (as defined in the Master Standard Service Offer Supply Agreement)".
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing

Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ [bank],  
\_\_\_\_\_ [address], (i) a notice in the form of Annex 1  
hereto, appropriately completed and duly signed by an Authorized Officer of Duke Energy  
Ohio and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly  
signed by an Authorized Officer of Duke Energy Ohio.

4. We hereby agree to honor a drawing hereunder made in compliance with the terms and conditions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such accounts at such banks in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 PM (prevailing Eastern Time) on the date of such drawing if delivery of this requisite document is made prior to 11:00 AM (prevailing Eastern Time) on a Business Day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made on or after 11:00 AM (prevailing Eastern Time) on any Business Day pursuant to Paragraph 3 hereof.
5. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
6. This Letter of Credit shall automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder, (ii) the date we receive from you a Certificate of Expiration in the form of Annex 3 hereto, or (iii) the above-stated expiration date hereof.
7. As used herein:  
  
"Authorized Officer" means President, Treasurer, any Vice President or any Assistant Treasurer or any other person holding an equivalent title.  
  
"Business Day" means any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fed wire system.
8. This Letter of Credit is not transferable, and except as otherwise expressly stated herein, is subject to the Uniform Customs and Practices for Documentary Credits – 2007 revision, ICC Publication No. 600, or any successor publication thereto (the "UCP"). All banking charges are for the account of the Bidder. This Letter of Credit shall, as to matters not governed by

<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time, all other times in this Letter of Credit, and the definition of a Business Day should be adjusted accordingly.

the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

9. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 3 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
10. We certify that as of \_\_\_\_\_ [date] we \_\_\_\_\_ [Bank] satisfy the minimum long-term senior unsecured debt rating of "A-" from Standard & Poor's Rating Services or "A3" from Moody's Investors Service, Inc.
11. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.
12. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ and confirmed by telephone to our Standby Letter of Credit Unit at \_\_\_\_\_.
13. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
14. This original Letter of Credit has been sent to the Auction Manager for Duke Energy Ohio's Competitive Bidding Process:

Attn: Robert Lee, Principal  
CRA International, Inc.  
John Hancock Tower  
200 Clarendon Street, T-33  
Boston, MA 02116-5092  
Phone: 617-425-3365

We understand that the Auction Manager holds the Letter of Credit for the benefit of Duke Energy Ohio. The aggregate amount paid to Duke Energy Ohio during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of Duke Energy Ohio. Acceptance or rejection of any amendments to this Letter of Credit must be signed by an Authorized Officer of Duke Energy Ohio.

Very truly yours,

[Bank]

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Bank]  
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$\_\_\_\_\_, inasmuch as the Bidder has \_\_\_\_\_ (state reason from conditions (a) – (d) of Paragraph 2).
3. The amount to be received by Duke Energy Ohio is \$\_\_\_\_\_.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

By \_\_\_\_\_  
Name:  
Title:  
Date:



Annex 2 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_

ON [Business Day pursuant to Paragraph 4]

PAY TO: Duke Energy Ohio, Inc.

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT NO.  
\_\_\_\_\_ OF

[Bank]  
[Address]

Duke Energy Ohio, Inc.

By \_\_\_\_\_  
Name:  
Title:  
Date:

Annex 3 to Letter of Credit

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: [Bank]  
[Address]

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

Duke Energy Ohio, Inc.

By \_\_\_\_\_  
Name:  
Title:  
Date:

cc: \_\_\_\_\_ [Bidder]

**Sample Letter of Intent to Provide a Guaranty**

\_\_\_\_\_, [Date]

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen,

We have been asked to provide a financial guaranty on behalf of \_\_\_\_\_ ("Bidder") should Bidder become a Standard Service Offer Supplier pursuant to its bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement.

Our relationship with Bidder is that of \_\_\_\_\_ [parent, affiliate, etc.]. Our senior unsecured debt rating meets the Minimum Rating as defined in the Master Standard Service Offer Supply Agreement.

We have confidence in Bidder's management and in its project development, implementation and operational capabilities.

Should there be no material change in affairs, we would consider providing a financial guaranty on behalf of Bidder, such that our liability does not exceed \$ \_\_\_\_\_ [amount]. We understand that this amount would be in excess of the amount of any guaranty that we have provided on behalf of Bidder. This letter, however, should not and cannot be taken as an indication of financing commitment of any kind whatsoever, or an absolute commitment to provide a financial guaranty.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature  
[Guarantor]  
[name] [title]

Ladies and Gentlemen,

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of intent in good faith, and that we know of no action on our part that would significantly impair \_\_\_\_\_ [Guarantor]'s assessment or its ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature  
[Bidder]  
[name] [title]

**Samples for Letter of Reference**

**SAMPLE 1**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen,

We \_\_\_\_\_ ("the Bank") are currently the agent on a \$\_\_\_\_\_ [amount] revolving credit facility to \_\_\_\_\_ ("Bidder"). At this time, there is sufficient unused availability under the credit facility to issue a letter of credit in the amount of \$\_\_\_\_\_ [amount] on behalf of Bidder in support of its bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement.

We have had a relationship with Bidder since \_\_\_\_\_ [date]. Our relationship with Bidder remains in good standing.

We certify that we, the Bank, satisfy the minimum senior unsecured debt rating of "A" from Standard & Poor's or "A2" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature

Bank

[name] [title]

Ladies and Gentlemen,

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly alter the unused availability under the credit facility mentioned above, or otherwise impair \_\_\_\_\_ [Bank]'s ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature

Bidder

[name] [title]

**SAMPLE 2**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen:

We \_\_\_\_\_ ("the Bank") are currently the agent on the credit agreements to \_\_\_\_\_ ("Bidder"). Bidder has \_\_\_\_\_ [amount] of unused credit facilities at our bank available for borrowing under the terms and conditions of these credit agreements. Such a loan could be used as a cash deposit in support of Bidder's bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement.

We have had a relationship with Bidder since \_\_\_\_\_ [date]. Our relationship with Bidder remains in good standing.

We certify that we, the Bank, satisfy the minimum senior unsecured debt rating of "A" from Standard & Poor's or "A2" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature  
[Bank]  
[name] [title]

Ladies and Gentlemen,

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly alter the amount of unused credit facilities mentioned above, or otherwise impair \_\_\_\_\_ [Bank]'s ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature  
[Bidder]  
[name] [title]

**SAMPLE 3**

\_\_\_\_\_ [Date]

Letter of Reference No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Duke Energy Ohio")

Ladies and Gentlemen,

We have been asked to provide a letter of reference on behalf of \_\_\_\_\_ ("Bidder") relative to its intentions to bid in Duke Energy Ohio's Competitive Bidding Process for purposes of procuring supply under the Master Standard Service Offer Supply Agreement.

Our relationship with Bidder has been extensive and has included involvement in a credit facility for \$\_\_\_\_\_ [amount] with aggregate lending commitments in excess of \$\_\_\_\_\_ [amount].

Should there be no material change in affairs, we would consider extending a letter of credit to Bidder in an amount not to exceed \$\_\_\_\_\_ [amount]. This letter, however, should not and cannot be taken as an indication of financing commitment or guaranty of any kind whatsoever, or an absolute commitment to provide any other services.

We certify that we \_\_\_\_\_ ("Bank") satisfy the minimum senior unsecured debt rating of "A" from Standard & Poor's or "A2" from Moody's.

Please feel free to call us if you require any additional information.

Sincerely,

\_\_\_\_\_  
Authorized signature  
[Bank]  
[name] [title]

Ladies and Gentlemen,

We \_\_\_\_\_ [Bidder] certify that we have obtained this letter of reference in good faith, and that we know of no action on our part that would significantly impair \_\_\_\_\_ [Bank]'s assessment or its ability to provide us with the support described above.

\_\_\_\_\_  
Authorized signature  
[Bidder]  
[name] [title]

**Attachment D**  
**Part 2 Application**

**Duke Energy Ohio, Inc.'s**  
**Competitive Bidding Process**  
**Auctions**

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

**PART 2 APPLICATION**  
**Duke Energy Ohio, Inc.'s Competitive Bidding Process Auctions**

## INSTRUCTIONS

**There are two parts to the application process.**

- **Part 1 Application:** Applicants submit the Part 1 Application and all documents required therein to become Qualified Bidders for the Competitive Bidding Process ("CBP").
- **Part 2 Application:** Qualified Bidders for the CBP submit the Part 2 Application, in which they will agree to comply with the Bidding Rules and Communications Protocols, accept the terms of Duke Energy Ohio, Inc.'s ("Duke Energy Ohio") Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), make certifications regarding associations and handling of Confidential Information, submit Indicative Offers, and post Pre-Bid Security to become Registered Bidders.

**This document is the Part 2 Application.**

**For further information, consult the Information Website.**

**Unless otherwise defined, capitalized terms in this document have the definitions provided in either the Glossary or the Master SSO Supply Agreement.**

## PART 2 APPLICATION SUBMISSION

**To become a Registered Bidder for the CBP, Applicants must submit the following to the Auction Manager electronically through the Secure Application Process and in hardcopy format to the address below by the Part 2 Application deadline:**

- **Electronic Application Form:** Completed Part 2 Application;
- **Hardcopy Application Form:** One (1) printed Part 2 Application with original signatures and the name of the Applicant on every page of the Part 2 Application;



Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

In addition to the completed Part 2 Application Forms, each Qualified Bidder must:

- Submit an Indicative Offer for the CBP;
- Submit a Letter of Credit, cash, and/or any additional Pre-Bid Security to support the Indicative Offer, as necessary; and
- Make required certifications on Applicant Associations and Confidential Information and, if unable to do so, make required information disclosures.

***The completed Part 2 Application MUST be received by the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application due date as posted in the timeline on the Information Website.***

**Send hardcopies to:**

Auction Manager  
c/o Robert Lee, Principal  
CRA International, Inc.  
John Hancock Tower  
200 Clarendon Street, T-33  
Boston, MA 02116-5092

Phone: 617-425-3365

**Photocopies and facsimiles of completed forms will not be accepted under any circumstances. It is in your interest to seek independent legal and financial advice before deciding to participate in the CBP.**

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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*Name of Applicant*

## **CONFIDENTIALITY OF PART 2 APPLICATION SUBMISSIONS**

All Applicants are required to comply with the Communications Protocols.

Confidentiality requirements specific to the Part 2 Application are reiterated below.

---

## **CONFIDENTIALITY OF CREDIT INFORMATION**

*Any information and materials that you submit in this Part 2 Application may be provided on a confidential basis to the Auction Manager Team and the Public Utilities Commission of Ohio ("PUCO" or "Commission") and their representatives. Representatives from Duke Energy Ohio will decide whether the form of Pre-Bid Security submitted is acceptable; Pre-Bid Security documents will be redacted prior to the closing of the bidding process so as not to reveal an Applicant's identity or the amount of the Applicant's Indicative Offer.*

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## **CONFIDENTIALITY OF REGISTERED BIDDERS AND INITIAL ELIGIBILITY**

*Upon completion of the Part 2 Application process, the names of Registered Bidders will be provided to other Registered Bidders on a confidential basis, as well as the total Initial Eligibility aggregated across all Registered Bidders and products. As part of this Part 2 Application, you are required to certify that you agree to release your name to other Registered Bidders and that you will keep confidential the list of Registered Bidders and total Initial Eligibility that is provided to you.*

---

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

**PART 2 APPLICATION  
Duke Energy Ohio, Inc.'s  
Competitive Bidding Process Auctions**

---

This Part 2 Application is the application form to become a Registered Bidder in Duke Energy Ohio's CBP.

**I. Background Information**

Before completing this form, please review the Bidding Rules document for this CBP ("Bidding Rules"), the Master SSO Supply Agreement, the Communications Protocols, and other documents posted on the Information Website so that you understand the conditions under which the CBP will be conducted.

**II. Confirmation of Receipt**

**Online delivery:** If your Part 2 Application is submitted online through the Secure Application Process, an email will be sent to the Authorized Representative and Delegate to confirm receipt. You will still be required to submit a copy of the Part 2 Application with original signatures via post or hand delivery.

**Delivery by Post or Hand Delivery:** If your Part 2 Application is received only by post or hand delivery, an email will be sent to the Authorized Representative and Delegate to confirm receipt.

**III. Incomplete Applications**

If your Part 2 Application is incomplete or requires clarification, the Auction Manager will send a deficiency notice to your Authorized Representative by email. You will have until 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date, or until 5:00 p.m. prevailing Eastern Time on the Business Day following the Business Day during which a deficiency notice is sent to you, whichever comes later, to respond. If you do not correct or adequately explain the deficiency within the time allowed, your Part 2 Application may be rejected and you may be unable to participate in the CBP. All corrections to remedy deficiencies within an Applicant's Part 2 Application must be submitted online. The Authorized Representative needs to sign and date next to the correction(s) to the Part 2 Application and send to the Auction Manager by email to [duke-energyauctionmanager@crai.com](mailto:duke-energyauctionmanager@crai.com), followed by hardcopy to the Auction Manager.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

#### **IV. Late Applications**

Part 2 Applications received after the stated deadline will NOT be accepted under any circumstances.

#### **V. Changes to Part 1 Application**

If changes to the Part 1 Application are warranted in order to fulfill the requirements of the Part 2 Application, those changes to the Part 1 Application must be received by the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time seven (7) Business Days prior to the Part 2 Application Due Date. All changes to an Applicant's Part 1 Application must be signed and dated by the Authorized Representative and sent to the Auction Manager by email to [duke-energyauctionmanager@crai.com](mailto:duke-energyauctionmanager@crai.com), followed by hardcopy to the Auction Manager.

#### **VI. Deficient Pre-Bid Security**

If your Credit Documents are not in a form acceptable to Duke Energy Ohio, your Authorized Representative will be emailed a deficiency notice and you will have until 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date or 5:00 p.m. prevailing Eastern Time of the second Business Day following the Business Day during which you are notified, whichever comes later, to submit revised documents. If you fail to meet this deadline, your Part 2 Application will be rejected.

If your Credit Documents are insufficient for your Indicative Offer, or if your other Pre-Bid Security is in a form that is not acceptable to Duke Energy Ohio, your Authorized Representative will be emailed a deficiency notice. You will have until the Part 2 Application Due Date or 5:00 p.m. prevailing Eastern Time of the second Business Day following the Business Day during which you are notified, whichever comes later, to submit revised documents. If you cannot correct the deficiency, your Application may be rejected or your Initial Eligibility may be reduced by the Auction Manager so that your Pre-Bid Security is sufficient to cover your Indicative Offer.

#### **VII. Certifications Regarding Associations**

You may be required to provide additional information to the Auction Manager and to the Commission and its representatives if you are unable to make the certifications in this Part 2 Application.

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

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*Name of Applicant*

### **VIII. Rejection of Applications**

If your application is rejected, your Part 2 Application and all supporting documents will be returned to you.

### **IX. Notification to Registered Bidders**

If you become a Registered Bidder for the CBP, the Auction Manager will send a Notification to Registered Bidders to your Authorized Representative by email after the Part 2 Application Due Date. The Notification to Registered Bidders will also be sent to your Authorized Representative by courier. If there are material changes to the Applicant's information provided in this Part 2 Application, you are obligated to notify the Auction Manager.

Prior to the auction, Registered Bidders will receive information to participate in the auction using the Auction Manager's secure Bidding Website.

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

## PART 2 APPLICATION FORMS

## 2.1 Applicant information

**Name of Applicant (Company Name)**

\_\_\_\_\_

### Authorized Representative's Contact Information

**Last Name**

\_\_\_\_\_

**Given Name(s)**

\_\_\_\_\_

Mr/Mrs/Ms/Dr/(other)

\_\_\_\_\_

**Title**

\_\_\_\_\_

**Street Address 1**

\_\_\_\_\_

**Street Address 2**

\_\_\_\_\_

City

[illegible]

**State**

\_\_\_\_\_

Zip Code

1000

**Telephone No.** \_\_\_\_\_

--

**Cell Phone No.** \_\_\_\_\_

\_\_\_\_\_

**Fax No.**

\_\_\_\_\_

**Email Address**

\_\_\_\_\_

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

**Delegate's Contact Information**

Last Name

Given Name(s)

Mr/Mrs/Ms/Dr/(other)

Company Name

Title

Street Address 1

Street Address 2

City

State

Zip Code

Telephone No.

Cell Phone No.

Fax No.

Email Address

**NOTE: The Authorized Representative and Delegate should be the same contact information that was provided in the Part 1 Application. Please email [duke-energyauctionmanager@cral.com](mailto:duke-energyauctionmanager@cral.com) if there are any changes to this information prior to the deadline for making changes as outlined in Section V above.**

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

## 2.2 Indicative Offer and Pre-Bid Security

In Table 2.1 below, provide your Indicative Offer at the Minimum Starting Price and the Maximum Starting Price for each product in the auction. Your Indicative Offer should be the maximum number of Tranches that you would be willing to supply at the Starting Prices for the auction subject to the limitations of any applicable credit-based tranche limit and any applicable Load Cap for the auction. In the auction itself, you are not required to bid the number of Tranches in your Indicative Offer. However, your Initial Eligibility to bid in the auction will be determined by the total number of Tranches across the products in your Indicative Offer at the Maximum Starting Price.

**You are required to submit a Letter of Credit for an amount equal to \$250,000 multiplied by the total number of Tranches in your Indicative Offer at the Maximum Starting Price. If you were required to do so, please provide additional Pre-Bid Security in an acceptable form. Instructions regarding the amount of the Letter of Reference and the amount of the Letter of Intent to Provide a Guaranty are provided in Table 2.1. Credit Documents in support of your Pre-Bid Security should be in the form provided on the Information Website or as approved in modified form during the Part 1 Application process.**

**Please check here ☐ if you are submitting a cash deposit as Pre-Bid Security.**

**Please check here ☐ if you are submitting a Letter of Credit as Pre-Bid Security.**

**Please check here ☐ if you are submitting a Letter of Intent to Provide a Guaranty from the named Guarantor on the Part 1 Application Forms [Section 1.8] as additional Pre-Bid Security.**

Please check here ☐ if you are submitting a Letter of Reference from a bank as additional Pre-Bid Security.

**Complete Table 2.1 to include the amounts of the cash deposits, Letter of Credit and/or other additional Pre-Bid Security that you are providing with this Part 2 Application.**



Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant \_\_\_\_\_

**Table 2.1 Indicative Offer and Pre-Bid Security**

Indicative Offer (number of Tranches)	Tranches @ Min Starting Price	Tranches @ Max Starting Price
17-month supply period Starting Price: Minimum=\$XX/MWh Maximum=\$YY/MWh		
29-month supply period Starting Price: Minimum=\$xx.xx/MWh Maximum=\$xx.xx/MWh	_____	_____
41-month supply period Starting Price: Minimum=\$xx.xx/MWh Maximum=\$xx.xx/MWh	_____	_____
<b>Number of Tranches summed across products at Max Starting Price:</b>		
<b>Amount of cash deposit or Letter of Credit</b> All Bidders: This amount is equal to \$250,000 multiplied by the number of Tranches summed across products at Max Starting Price		Cash    LoC
<b>Amount of Additional Pre-Bid Security</b> If required, this amount is equal to \$500,000 multiplied by the number of Tranches summed across products at Max Starting Price.  NOTE: Stand-alone investment-grade companies with a sufficient Independent Credit Threshold (ICT) to cover the amount of additional Pre-Bid Security calculated above are not required to post additional security. All other Bidders are required to post additional Pre-Bid Security in the form of a Letter of Intent to Provide a Guaranty and/or a Letter of Reference for an amount not to exceed their ICT. If necessary, additional cash or a Letter of Credit may be provided in lieu of a Letter of Reference.		
<ul style="list-style-type: none"> <li>Please enter the amount of additional Pre-Bid Security in the form of a Letter of Intent to Provide a Guaranty in the box on the right.</li> </ul> NOTE: This is an option for companies with an investment-grade guarantor.		
<ul style="list-style-type: none"> <li>Please enter the amount of additional Pre-Bid Security in the form of a Letter of Reference in the box on the right.</li> </ul> NOTE: This is an option for companies without an investment grade rating and/or with a below-investment grade guarantor.		

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

<b>Indicative Offer (continued)</b>	
<ul style="list-style-type: none"> <li>Please enter the amount of additional Pre-Bid Security in the form of cash deposit or Letter of Credit in the box on the right.</li> </ul> <p>NOTE: This is an option for companies unable to provide a Letter of Reference of sufficient magnitude to cover the additional Pre-Bid Security amount.</p>	<p>Cash</p>  <p>LoC</p>

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

**If you are submitting a Letter of Credit, in the space below, please provide instructions for returning the Letter of Credit once it can be cancelled.**

[illegible]

**If you are submitting a cash deposit, please attach a copy of your W9 (for tax ID) and banking information on your company's letterhead (signed and dated) and, in the space below please provide wiring instructions for returning your cash deposit.**

--

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

### 2.3 Certifications by Authorized Representative

**Please consult the list of Qualified Bidders for the CBP provided to you upon qualification. The following certifications are those contained in the "Association and Confidential Information Rules" of the Bidding Rules for the CBP auctions ("Bidding Rules"). Please consult the criteria for associations and the definition of Confidential Information in the Bidding Rules. Please also consult the Communications Protocols to understand the requirements regarding the treatment of Confidential Information.**

**Please make the following certifications. All Qualified Bidders, including each party to a Bidding Consortium, Bidding Agreement or Joint Venture for the purpose of bidding in the CBP, must make these certifications. The following certifications (1) to (8) will apply from the time of qualification until the results of the CBP are finalized. Completion of the following certifications also signifies your acknowledgement that you do not know of or cannot reasonably anticipate, at the time of this Part 2 Application, any events that might cause these certifications to become untrue during the period to which each certification applies. If you cannot make one or more of these certifications, please disclose the necessary information to explain why you cannot make these certifications.**

- (1) Please certify that you are not associated with another Qualified Bidder according to the criteria as defined in the Bidding Rules.

**Signature of Authorized Representative**

Date \_\_\_\_\_

**If unable to make certification (1) requested above please identify the Qualified Bidder(s) in the CBP with whom you are associated and the nature of the association.**

--	--

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

- (2) Please certify that, other than parties explicitly named in Section 1.11 of your Part 1 Application as parties with whom you have entered into a Bidding Agreement, Joint Venture for the purpose of bidding in the CBP, or Bidding Consortium or other arrangement pertaining to bidding in the CBP, you have not entered into any agreement with another Qualified Bidder, directly or indirectly, regarding bids in the CBP, including, but not limited to, the amount to bid at certain prices, when or at what prices bids are to be withdrawn, or the amount of exit prices.

**Signature of Authorized Representative**

Date \_\_\_\_\_

- (3) Please certify that any person who will be advising or assisting you with bidding strategy in the CBP, with estimation of the value of Tranches, or with the estimation of the risks associated with serving SSO Load (an advisor) will either (i) not provide any similar advice or assistance to any other Qualified Bidder; or (ii) if such person will provide similar advice or assistance to another Qualified Bidder, or if such person will be privy to Confidential Information relative to any other Qualified Bidder's bidding strategy, that appropriate protections have been put into place to ensure that the advisor does not serve as a conduit of information between, or as a coordinator of the bidding strategies of, multiple bidders, and please describe such appropriate protections in the space below.

**Signature of Authorized Representative**

Date \_\_\_\_\_

**If unable to make certification (3) requested above please name the advisor(s) and the Qualified Bidder(s) concerned.**

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

- (4) Please certify that you are not a party to any contract for the purchase of power that might be used as a source of supply for SSO Service, and that (i) would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the CBP) to the counterparty under such a contract; or (ii) that would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the CBP) to any other party; or (iii) that would provide instructions, direct financial incentives, or other inducements for the Bidder to act in a way determined by the counterparty in the agreement and/or in concert with any other Bidder in the CBP. Notwithstanding the above, you may, during negotiations prior to the CBP for contractual arrangements for power to serve SSO Load were you to be a winner at the CBP, discuss with the counterparty to such arrangements the nature of the standard products to be purchased, the volume, and the price at which you are willing to buy these products, so long as such arrangements do not result in violation of (i), (ii) or (iii) above.

**Signature of Authorized Representative**

Date \_\_\_\_\_

**If unable to make certification (4) requested above please disclose the contractual terms that prevent you from making the certification. Please identify the counterparty and if applicable, the party to whom information disclosure must be made under the terms of the contract.**

[illegible]

- (5) Please certify that you do not have any knowledge of Confidential Information that is relevant to the bidding strategy of any other Qualified Bidder.**

**Signature of Authorized Representative**

Date \_\_\_\_\_

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

If unable to make certification (5) requested above please name the other Qualified Bidder(s) and the nature of the Confidential Information.

- (6) Please certify that you will not disclose Confidential Information relative to your bidding strategy except to bidders that were explicitly named in your Part 1 Application as parties with whom you have entered into a Bidding Agreement, Joint Venture for the purpose of bidding in the CBP, or Bidding Consortium or other arrangement pertaining to bidding in the CBP, Bidders with which you are associated as disclosed through certification (1), to your advisors, and to your financial institution.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

If unable to make certification (6) requested above please explain.

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

- (7) Please certify that, other than entities with which you are affiliated and other than bidders with which you have entered a Bidding Agreement, or Joint Venture for purposes of the CBP, or Bidding Consortium, or other arrangement pertaining to the CBP, no party has agreed to defray any of the costs of participating in the CBP, including the cost of preparing the bid, the cost of any financial guarantees, the cost to be paid upon winning a Tranche, and any other participation cost.

**Signature of Authorized Representative**

**Date**

**If unable to make certification (7) requested above please explain.**

[illegible]

- (8) Please certify your agreement that the submission of any bid in the CBP creates a binding and irrevocable offer to provide service under the terms set forth in the Master SSO Supply Agreement and that a binding and enforceable contract to provide service with respect to the number of Tranches for which you were a winner in the CBP shall arise under the Master SSO Supply Agreement. Please note that failure to execute the Master SSO Supply Agreement within three (3) Business Days of the conclusion of the CBP may result in the forfeiture of the Letter of Credit.

**Signature of Authorized Representative**

**Date**

**If unable to make certification (8) requested above please explain.**

[illegible]



Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

**The following certifications (9), (10) and (11) will apply from the date on which you make the certifications.**

- (9) Please certify that if you are registered to participate in the CBP, you will not disclose at any time information regarding the Initial Eligibility in the CBP or the list of Registered Bidders, including the number of Registered Bidders, the identity of any one or all entities that have been registered, or the fact that an entity has not been registered for participation in the CBP.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

\_\_\_\_\_  
*Name of Applicant*

- (10) Please certify that you will not disclose any Confidential Information regarding the CBP to any party except your advisors and Bidders with which you are associated as disclosed in certification (1).

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

If unable to make certification (10) requested above please explain.

--

- (11) Please certify that you will continue to abide by your prior confidentiality certifications. You will not disclose any Confidential Information regarding the CBP to any party except to your advisor and Bidders with which you are associated. Please certify that you will destroy all documents, written or electronic, provided by the Auction Manager that contain Confidential Information regarding the CBP within five (5) days of the close of the bidding, or earlier if so instructed by the Auction Manager.

\_\_\_\_\_  
Signature of Authorized Representative

\_\_\_\_\_  
Date

If unable to make certification (11) requested above please explain.

--

Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

---

*Name of Applicant*

## **2.4 Ongoing Obligations**

Please note that all obligations, terms and conditions set forth in the Bidding Rules and Master SSO Supply Agreement remain in effect and apply to the certifications made herein, including but not limited to the following:

- Section 4.2.3 of the Bidding Rules - Sanctions can be imposed on a bidder for failing to disclose information relevant to determining associations, for coordinating with another bidder, or for failing to abide by any of the certifications that it will have made in its Part 1 and Part 2 Applications. Such sanctions can include, but are not limited to, termination of the Master SSO Supply Agreement, loss of all rights to provide supply for Duke Energy Ohio to serve any load won by such bidder, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, debarment from participation in future competitive bidding process, and other sanctions that may be appropriate. For any failure to disclose information or for any violation of the certifications, the Auction Manager will make a recommendation on a possible sanction.

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

Name of Applicant

## 2.5 Justification of Omissions

**If you are unable to provide all documents or all information requested in this Part 2 Application, please justify fully any omissions in the space provided below.**

--

## Part 2 Application: Duke Energy Ohio, Inc.'s CBP Auctions

**Name of Applicant**

## Appendix A – Enclosures to the Part 2 Application

**This is a checklist of documents to be enclosed with this Part 2 Application.**

- ☐ One copy of completed Part 2 Application forms (with original signatures)
- ☐ One copy of W9 Form (for Tax ID) and one copy of banking information on your company's letterhead (signed and dated) (if submitting Cash Deposit as Pre-Bid Security) [Section 2.2]
- ☐ Letter of Credit (if applicable) [Section 2.2]
- ☐ Letter of Intent to Provide a Guaranty (if applicable) [Section 2.2]
- ☐ Letter of Reference (if applicable) [Section 2.2]
- ☐ Other forms of alternative security (if applicable) [Section 2.2]

## End of Part 2 Application

**Attachment E**

**Communications Protocols for**

**Duke Energy Ohio, Inc.'s**

**Competitive Bidding Process Auctions**

**Table of Contents**

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1. INTRODUCTION .....	1
2. OBJECTIVES.....	2
3. DUKE ENERGY OHIO AND AFFILIATE.....	2
3.1 INTERNAL COMMUNICATIONS .....	2
3.2 COMMUNICATIONS WITH BIDDERS .....	3
3.3 PART 1 APPLICATION PROCESS.....	3
3.4 PART 2 APPLICATION PROCESS.....	3
3.5 COMMUNICATION OF THE BID SELECTION CRITERIA .....	3
3.6 AUCTION RESULTS.....	3
4. GENERAL PUBLIC AND MEDIA.....	4
4.1 THE INFORMATION WEBSITE .....	4
4.2 REGISTERED USERS .....	4
4.3 PRESS RELEASES.....	4
4.4 ANSWERING INQUIRIES FROM THE GENERAL PUBLIC OR MEDIA.....	5
5. BIDDERS .....	5
5.1 COMMUNICATIONS AMONG BIDDERS.....	5
5.2 COMMUNICATIONS BETWEEN THE CBP MANAGER AND BIDDERS.....	5
5.3 FREQUENTLY ASKED QUESTIONS.....	5
5.4 BIDDING PROCESS.....	6
5.5 LIMITATIONS ON DISCLOSURE BY BIDDERS .....	6
6. PUBLIC UTILITIES COMMISSION OF OHIO .....	6
6.1 IDENTIFICATION OF THE PUCO CONSULTANT .....	6
6.2 COMMUNICATIONS WITH THE CBP MANAGER .....	6
6.3 COMMUNICATIONS WITH DUKE ENERGY OHIO .....	7
6.4 COMMUNICATIONS WITH BIDDERS .....	7
6.5 INFORMATION ON AUCTION PARTICIPATION .....	7
6.6 ROUND-BY ROUND BIDS.....	7
7. APPENDIX A .....	8

## **1. INTRODUCTION**

These Communications Protocols apply to the competitive bidding process ("CBP") auctions for Duke Energy Ohio, Inc. ("Duke Energy Ohio") to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for retail customers that take retail generation service from Duke Energy Ohio.

The Communications Protocols in this document are intended to promote a fair, open, transparent, objective, and non-discriminatory process for the CBP auctions to procure a supply of energy for SSO customers of Duke Energy Ohio. These protocols also intend to protect proprietary information of participants and information that, should it be released, would be detrimental to the outcome of the auction process or future competitive bidding processes.

Unless noted otherwise, all capitalized terms are defined in the Glossary, a separate document that is incorporated herein by reference, or the Master SSO Supply Agreement.

These protocols elaborate upon the means by which confidentiality is to be maintained by all parties through adherence to the procedures in this document. Should the Auction Manager recognize that additional information should be kept confidential, the Auction Manager will establish additional procedures in keeping with the principles provided in this document and inform Duke Energy Ohio, the PUCO and PUCO Staff, the PUCO Consultant, and Bidders in a timely manner.

This document is organized as follows:

- Section 2 summarizes the objectives of this document.
- Section 3 describes protocols regarding communications between Duke Energy Ohio and Bidders, including any affiliate of Duke Energy Ohio.
- Section 4 summarizes information that may be communicated with the general public, including the media, and the means by which that information is disseminated.
- Section 5 addresses Bidder Communications Protocols, including communications among Bidders and between the Auction Manager and Bidders.
- Section 6 summarizes Communications Protocols with the PUCO, including communications between the PUCO and the Auction Manager, between the PUCO and Duke Energy Ohio and disclosure of confidential information.
- Appendix A includes a confidentiality agreement to be signed by any party other than the Auction Manager or Bidders who may have access to proprietary and confidential information.



## **2. OBJECTIVES**

This document and the procedures it describes promote four main objectives:

- The first objective is to establish a fair and equitable process for all Bidders by ensuring all Bidders have equal access to the same information necessary to evaluate the bidding opportunity and to prepare their bids in a timely manner.
- The second objective is to take all reasonable precautions that any information generated by the auction process that could harm the competitive position of Bidders or Duke Energy Ohio, if released, is kept confidential.
- The third objective is to take all reasonable precautions that confidential information is provided only to those persons to whom it is deemed necessary for the conduct and management of the auction process.
- The fourth objective is to ensure that information that, if released, could harm the competitiveness of future competitive bidding processes, is kept confidential from all entities, including Bidders.

These objectives will be accomplished by following two guiding principles. The first is that there will be one communication point for Bidders: all communications to prospective and actual Bidders will be through the Auction Manager. The second guiding principle is that the Auction Manager will distribute and disseminate information equally and fairly to all prospective and actual Bidders. These two guiding principles facilitate equal access to the same information for all Bidders. Only the Auction Manager responds to inquiries from Bidders and information is disseminated to all Bidders by or under the supervision of the Auction Manager.

The Auction Manager also will ensure that information generated by the implementation of the auction that could harm the competitive position of Bidders, if released, is kept confidential by those who have access to such information.

## **3. DUKE ENERGY OHIO AND AFFILIATES**

### **3.1 Internal Communications**

Duke Energy Ohio will designate individuals to work on the auction process. These individuals, directly or indirectly, will not have communication with, or exchange information with, any individuals of an affiliate of Duke Energy Ohio that may bid in the auction process where such communication or information is related directly or indirectly to this auction process. For purposes of this Section only, an affiliate of Duke Energy Ohio includes that part of Duke Energy Ohio that engages in merchant activity.

### **3.2 Communications with Bidders**

Duke Energy Ohio will not communicate with Bidders prior to the selection of winning bids. When the Auction Manager informs Duke Energy Ohio about the prices and tranches of the winning bids and the identity of winning Bidders, representatives from Duke Energy Ohio then will communicate with the winning Bidders in order to execute the necessary documents.

If a Bidder attempts to contact Duke Energy Ohio regarding the auction process by phone call, email, fax, or other means, Duke Energy Ohio will direct the Bidder to the Information Website and/or to the Auction Manager.

### **3.3 Part 1 Application Process**

For the Part 1 Application process, the Auction Manager will need to provide the names of applicants to Duke Energy Ohio's credit department for purposes of confirming the applicants' credit requirements.

### **3.4 Part 2 Application Process**

For the Part 2 Application process, the Auction Manager will need to provide the aggregate eligibility and other information from the Part 2 Applications to Duke Energy Ohio with the names of applicants redacted.

### **3.5 Communication of the Bid Selection Criteria**

No later than one business day before bids are due, Duke Energy Ohio will provide the Auction Manager with details concerning the pre-determined bid selection criteria. The pre-determined bid selection criteria will be price-based, such as a reservation price.

### **3.6 Auction Results and Post-Auction Reports**

If there are winning bid(s), shortly after the close of the auction, the Auction Manager will: (a) prepare its post-auction letter that informs Duke Energy Ohio (as well as the PUCO and PUCO Consultant) about the winning bids and identify the winning Bidders, and (b) notify the winning Bidders. Duke Energy Ohio will contact the winning Bidders to execute necessary documents. The Auction Manager also will inform any Bidders that did not win tranches that they have not been awarded any tranches in the auction process.

If there are no winning bid(s), the Auction Manager will inform Duke Energy Ohio (as well as the PUCO and PUCO Consultant) there are no bids that met the criteria for a winning bid.

Any paper copies of the bidding results will be secured in the Auction Manager's office.

The PUCO may receive from the PUCO Consultant a post-auction report. The Auction Manager shall review the PUCO Consultant's post-auction report in un-redacted, draft form in order to provide comments prior to the final version. Duke Energy Ohio shall receive the PUCO Consultant's report and provide comments to ensure accuracy.

#### **4. GENERAL PUBLIC AND MEDIA**

While bidding is in progress, there shall be no communication with the media or the public other than notification when the bidding begins. After the auction process is completed, results are determined, and Bidders have been notified, all media inquiries will be forwarded to Duke Energy Ohio.

##### **4.1 The Information Website**

The central source of information made available publicly and to Bidders is the Information Website. The Auction Manager will manage the information flow on the Information Website and will be designated on the Website as the contact person for any questions or inquiries from parties. Any party will have access to the public sections of the Information Website. The Information Website also will have restricted, non-public section that will be accessible only to Applicants.

##### **4.2 Registered Users**

If a party wishes to receive notices and updates regarding public information and new postings to the Information Website, then the party can register through the Information Website to become a Registered User. (Note that not all Registered Users become Registered Bidders, but a Bidder that would like to become a Registered Bidder must first register to become a Registered User so they can receive notices and updates.)

Any information the Auction Manager has concerning the auction process that is relevant and that can be disclosed publicly will be made available equally to all Registered Users in a timely manner. The method of such communication will be via the Information Website and/or emails to Registered Users using the BCC email field so identification of Registered Users is not disclosed to other Registered Users.

##### **4.3 Press Releases**

Duke Energy Ohio and/or the Auction Manager may issue one or more press releases or may place news items in the trade press with the intent to disseminate information about the auction process in an efficient, fair, and timely manner.

#### **4.4 Answering Inquiries from the General Public or Media**

Inquiries from the general public to the Auction Manager will be directed to the Information Website. Inquiries from the media to the Auction Manager will be directed to Duke Energy Ohio.

### **5. BIDDERS**

#### **5.1 Communications Among Bidders**

Pursuant to the auction rules, Bidders are prohibited from communicating with each other in ways that would compromise the integrity and competitiveness of the auction process. Sanctions will be applied if these rules are violated.

#### **5.2 Communications between the Auction Manager and Bidders**

The central source of information made available to Bidders is the Information Website. The Website will facilitate making information available equally to Bidders in a timely manner.

Bidders will be requested to become Registered Users to receive ongoing information about the auction process. As discussed above, once registered through the Information Website, Registered Users will receive notifications from the Auction Manager about updates to the auction process and to the Information Website.

If the Auction Manager receives an inquiry from a party and prepares a response that would be relevant for other parties, the Auction Manager will ensure the information will be made available equally to all Registered Users in a timely manner and will post the information on the Information Website without revealing the identity of parties.

In addition to posting information to the Information Website, the Auction Manager may contact Bidders directly in order to seek or provide information about the auction process in a way that does not advantage any Bidder.

Any communications from the Auction Manager to a Bidder will not reveal the identity of other Bidders.

#### **5.3 Frequently Asked Questions**

Among other information and resources on the Information Website, there will be a FAQ (frequently asked questions) section with posted questions and answers. As inquiries are received, they will be converted into a FAQ and posted on the Information Website without revealing the identity of the party posing the inquiry.

Inquiries to be answered by Duke Energy Ohio will be forwarded by the Auction Manager to Duke Energy Ohio. Inquiries to be answered by the Auction Manager will be forwarded to Duke Energy Ohio with a draft response. Any inquiry or draft response forwarded by the Auction Manager to Duke Energy Ohio will not identify the party posing the inquiry. Both Duke Energy Ohio and the Auction Manager will review any inquiry and response before the FAQ is posted to the Information Website.

#### **5.4 Bidding Process**

During the auction, the Auction Manager, the PUCO, the PUCO Consultant, if any, and Duke Energy Ohio's personnel may monitor the bidding process, onsite at the Auction Manager's auction facility.

The Auction Manager will ensure the bids submitted by Bidders conform to the rules of the auction process.

The Bidding Rules and pre-determined bid selection criteria will be applied to determine which bids, if any, are winning bids.

#### **5.5 Limitations on Disclosures by Bidders**

Bidders shall not disclose that they are participating in a CBP auction and winning Bidders shall not disclose that they have won any tranches in a CBP auction until the PUCO publicly reports the results of the CBP auction. Such limitation on public disclosure by bidders is waived if disclosure is required by law.

### **6. PUBLIC UTILITIES COMMISSION OF OHIO**

#### **6.1 Identification of the PUCO Consultant**

The PUCO may identify up to three individuals who will serve as the PUCO Consultant and may be onsite at the offices of the Auction Manager during the bidding process. Other than information that is accessible by being onsite, the PUCO Consultant will not be forwarded confidential information electronically or in hardcopy format. Individuals so designated by the PUCO are required to abide by the Communication Protocols and sign the confidentiality agreement in Appendix A to these Communications Protocols.

#### **6.2 Communications with the Auction Manager**

During the bidding process, the identity of Bidders, prices, and the number of tranches each winning bidder has won will be kept confidential. This information may be released to the PUCO after the close of the auction.

**6.3 Communications with Duke Energy Ohio**

The PUCO may communicate with Duke Energy Ohio regarding the auction process. However, Duke Energy Ohio will not disclose any proprietary information until after the final round of the auction is completed and Bidders are informed of the results of the auction.

**6.4 Communications with Bidders**

The PUCO will not communicate with Bidders about the auction process prior to the determination of winning bids. If a Bidder attempts to contact the PUCO by phone call, email, fax, or other means, the PUCO will direct the Bidder to the Information Website and/or to the Auction Manager.

**6.5 Information on Auction Participation**

In order to maintain confidential and proprietary information provided by Bidders as part of the auction process, the identity of all Bidders that submitted Part 1 and/or Part 2 Applications in the auction and the indicative offers will be kept confidential until released publicly by the PUCO. The PUCO may elect to keep these data confidential at its sole discretion.

**6.6 Round-by-Round Bids**

Actual round-by-round bids by Bidders will be kept confidential pursuant to the confidentiality provisions of the Bidding Rules and the Master SSO Supply Agreement for as long as Duke Energy Ohio continues to procure supply for SSO customers through this competitive bidding process.

Communications Protocols for Duke Energy Ohio's Competitive Bidding Process Auctions Attachment E

**7. APPENDIX A**

**CONFIDENTIALITY AGREEMENT**

I acknowledge that I have read and understand the Communications Protocols and obligations regarding treatment of confidential information related to the CBP auctions to procure generation supply for SSO customers of Duke Energy Ohio.

I certify that I have abided by its terms and that I agree to continue to abide by its terms and conditions. I acknowledge that I may be subject to potential injunctive action to enforce this confidentiality agreement, as well as liability from parties participating in the CBP auctions to procure supply for SSO customers of Duke Energy Ohio should I be found in violation of this confidentiality agreement.

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signed by

\_\_\_\_\_  
Date

Please return the signed form to the Auction Manager at:  
duke-energyauctionmanager@crai.com  
or fax to:

CRA International, Inc.  
John Hancock Tower  
200 Clarendon Street, T-33  
Boston, MA 02116-5092  
Phone: 617.425.3365  
Fax: 617.425.6574  
duke-energyauctionmanager@crai.com  
Attn: Robert Lee, Principal / Auction Manager

**MASTER STANDARD SERVICE OFFER ("SSO")**

**SUPPLY AGREEMENT**

**BY AND BETWEEN**

**DUKE ENERGY OHIO, INC.**

**AND**

**EACH SSO SUPPLIER SET FORTH ON ATTACHMENT A HERETO**



## TABLE OF CONTENTS

ARTICLE 1 .....	6
DEFINITIONS .....	6
ARTICLE 2 .....	14
TERM AND TERMINATION .....	14
2.2 <u>Mutual Termination</u> .....	14
2.3 <u>Early Termination</u> .....	15
2.4 <u>Effect of Termination</u> .....	15
ARTICLE 3 .....	15
GENERAL TERMS AND CONDITIONS .....	15
3.1 <u>SSO Supplier's Obligations to Provide SSO Supply and Other Obligations</u> .....	15
3.2 <u>Duke Energy Ohio's Obligation to Take SSO Supply and other Obligations</u> .....	16
3.3 <u>PJM E-Accounts</u> .....	17
3.4 <u>Reliability Guidelines</u> .....	17
3.5 <u>Regulatory Authorizations</u> .....	17
3.6 <u>PJM Member Default Cost Allocation</u> .....	18
3.7 <u>Status of SSO Supplier</u> .....	18
3.8 <u>Sales for Resale</u> .....	18
ARTICLE 4 .....	18
SCHEDULING, FORECASTING AND INFORMATION SHARING .....	18
4.1 <u>Scheduling</u> .....	18
4.2 <u>Load Forecasting</u> .....	19
4.3 <u>Disconnection and Curtailment by Duke Energy Ohio</u> .....	19
4.4 <u>Loss of Service to SSO Customers</u> .....	19
4.5 <u>PJM Requirements</u> .....	20
4.6 <u>Compliance with Governmental Directives</u> .....	20
ARTICLE 5 .....	20
CREDIT AND PERFORMANCE SECURITY .....	20
5.1 <u>Applicability</u> .....	20
5.2 <u>Creditworthiness Determination</u> .....	21
5.3 <u>Independent Credit Requirement</u> .....	21
5.4 <u>Independent Credit Threshold</u> .....	22
5.5 <u>Mark-to-Market Credit Exposure Methodology</u> .....	25
5.6 <u>Credit Limit</u> .....	26
5.7 <u>Posting Margin Collateral and Return of Excess Collateral</u> .....	29
5.8 <u>Grant of Security Interest; Remedies</u> .....	30
5.9 <u>Acceptable Forms of Security</u> .....	31
5.10 <u>Reporting; Maintenance of Creditworthiness</u> .....	32
5.11 <u>Interest on Cash Held by Companies</u> .....	33

5.12 <u>No Endorsement of SSO Supplier</u> .....	33
ARTICLE 6 .....	33
BILLING, PAYMENT AND NETTING .....	33
6.1 <u>Invoice Statement</u> .....	33
6.2 <u>PJM Billing; Third Party Billing</u> .....	34
ARTICLE 7 .....	35
BREACH AND DEFAULT .....	35
7.1 <u>Events of Default</u> .....	35
7.2 <u>Remedies Upon an Event of Default</u> .....	37
7.3 <u>Default Damages; Settlement Amount; Termination Payment</u> .....	37
7.4 <u>SSO Supplier Right to Assume</u> .....	40
7.5 <u>Setoff of Payment Obligations of the Non-Defaulting Party</u> .....	40
7.6 <u>Preservation of Rights of Non-Defaulting Party</u> .....	40
ARTICLE 8 .....	41
REPRESENTATIONS AND WARRANTIES .....	41
8.1 <u>Duke Energy Ohio's Representations and Warranties</u> .....	41
8.2 <u>SSO Supplier Representations and Warranties</u> .....	42
ARTICLE 9 .....	43
RISK OF LOSS; LIMITATION OF LIABILITY .....	43
9.1 <u>Risk of Loss</u> .....	43
9.2 <u>Limitation of Liability</u> .....	44
ARTICLE 10 .....	44
INDEMNIFICATION .....	44
10.1 <u>Indemnification</u> .....	44
ARTICLE 11 .....	46
DISPUTE RESOLUTION .....	46
11.1 <u>Informal Dispute Resolution</u> .....	46
11.2 <u>Binding Arbitration</u> .....	46
11.3 <u>Recourse to Agencies or Courts of Competent Jurisdiction</u> .....	47
ARTICLE 12 .....	47
MISCELLANEOUS PROVISIONS .....	47
12.1 <u>Assignment</u> .....	47
12.2 <u>Notices</u> .....	48
12.3 <u>General</u> .....	49
12.4 <u>Governing Law</u> .....	49
12.5 <u>Standard of Review</u> .....	49
12.6 <u>PJM Agreement Modifications</u> .....	50
12.7 <u>Confidentiality</u> .....	50

12.8	<u>Taxes</u> .....	51
12.9	<u>Record Retention</u> .....	52
12.10	<u>Rules as to Usage</u> .....	52
12.11	<u>Counterparts</u> .....	53

## MASTER SSO SUPPLY AGREEMENT

This Master SSO Supply Agreement ("Agreement"), dated as of \_\_\_\_\_, \_\_\_\_ 2011 ("Effective Date"), is by and between Duke Energy Ohio, Inc., an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio ("Duke Energy Ohio") and each of the suppliers listed on Attachment A severally, but not jointly, (each an "SSO Supplier" and collectively "SSO Suppliers"). Duke Energy Ohio and each SSO Supplier are hereinafter referred to individually as a "Party" or collectively as the "Parties").

### RECITALS

**WHEREAS**, Duke Energy Ohio is an Ohio public utility that engages, inter alia, in providing SSO Service within its service territory; and

**WHEREAS**, the PUCO found that, commencing on and after \_\_\_\_\_, it would serve the public interest for Duke Energy Ohio to secure SSO Supply through a competitive bidding process; and

**WHEREAS**, on \_\_\_\_\_, 2011, Duke Energy Ohio conducted and completed a successful Solicitation for SSO Supply; and

**WHEREAS**, each SSO Supplier was one of the winning bidders in the Solicitation for SSO Supply; and

**WHEREAS**, the PUCO has authorized Duke Energy Ohio to contract with winning bidders for SSO Supply to serve SSO Load in accordance with the terms of this Agreement; and

**WHEREAS**, as authorized pursuant to order of the Federal Regulatory Commission ("FERC") dated October 21, 2010 (Docket No. ER10-2254-000; 133 FERC ¶61,058), the Duke Energy Zone became integrated into the PJM Control Area effective as of January 1, 2012; and

WHEREAS, Duke Energy Ohio and the SSO Suppliers desire to enter into this Agreement setting forth their respective obligations concerning the provision of SSO Supply.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

## ARTICLE 1 DEFINITIONS

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

"Affiliate" means, with respect to any Person, any other Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"Ancillary Services" has the meaning set forth in the PJM Agreements.

"Bankrupt" means with respect to any entity, that such entity (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (v) is unable to pay its debts as they fall due.

"Bankruptcy Code" means those laws of the United States of America related to bankruptcy, codified and enacted as Title 11 of the United States Code, entitled "Bankruptcy" and found at 11 U.S.C. § 101 et seq.

"Billing Period" means hour ending 0100 on the first day of a calendar month through hour ending 2400 on the last day of the applicable calendar month.

"Billing Statement" has the meaning set forth in Section 6.1(a).

"Business Day" means any day except a Saturday, Sunday or a day PJM declares to be a holiday, as posted on the PJM website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. prevailing Eastern Time, unless otherwise agreed to by the Parties in writing.

"Capacity" means "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of capacity obligation of an LSE as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

"Charge" means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of Duke Energy Ohio, or any other amount that is billable by Duke Energy Ohio to the SSO Supplier under this Agreement.

"Commercial Customer" means a Customer taking service under one of Duke Energy Ohio's non-residential rates (Rate DS, Rate DM, Rate DP, Rate CUR, Rate EH, Rate GSFL, Rate SFL-ADPL, Rate RTP, or Rate TS).

"Costs" mean, with respect to the Non-Defaulting Party, all reasonable attorney's fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorney's fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between Duke Energy Ohio and the applicable SSO Supplier.

"Credit Limit" means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6, granted by Duke Energy Ohio to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO Supplier.

"CRES Supplier" means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of Duke Energy Ohio.

"Cross Default Amount" means an amount equal to five percent (5%) of a Defaulting Party's or Defaulting Party's Guarantor's (as applicable) Tangible Net Worth.

"Customer" means any Person who receives distribution service from Duke Energy Ohio in accordance with the Legal Authorities.

"Default Allocation Assessment" has the meaning set forth in the PJM Agreements.

"Default Damages" means direct damages, calculated in a commercially reasonable manner, that the Non-Defaulting Party incurs as a result of an Event of Default by the Defaulting Party. Default Damages may include: (i) the positive difference (if any) between the price of SSO Supply hereunder and the price at which Duke Energy Ohio or the SSO Supplier is able to purchase or sell (as applicable) SSO Supply (or any components of SSO Supply it is able to purchase or sell) from or to third parties including other SSO Suppliers and PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell SSO Supply; and (iv) Costs.

"Defaulting Party" has the meaning set forth in Section 7.1.

"Delivery Period" means the Original Delivery Period, unless this Agreement is terminated earlier in accordance with the provisions hereof.

"Delivery Point" means the Duke Energy Ohio Load Zone as defined within PJM.

"Duke Energy Ohio Load Zone" means that set of electrical locations determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption for Duke Energy Ohio within PJM and used for the purposes of scheduling, reporting withdrawal volumes, and settling Energy transactions at aggregated load levels, to facilitate Energy market transactions.

"Duke Energy Ohio Indemnified Party" has the meaning set forth in Section 10.1(a).

"Early Termination" has the meaning set forth in Section 2.3.

"Early Termination Date" means, as between Duke Energy Ohio and the applicable SSO Supplier, the date upon which an Early Termination becomes effective as specified in Section 7.2(b).

"Effective Date" has the meaning set forth in the preamble.

"Emergency" means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a condition that requires implementation of emergency operations procedures; or (iii) any other condition or situation that Duke Energy Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair Duke Energy Ohio's electrical system or the electrical system(s) of other Person(s) to which Duke Energy Ohio's electrical system is directly or indirectly connected (a "Connected Entity"). Such a condition or situation may include potential overloading of Duke Energy Ohio's subtransmission or distribution circuits, PJM minimum generation ("light load") conditions, or unusual operating conditions on either Duke Energy Ohio's or a Connected Entity's electrical system, or conditions such that Duke Energy Ohio is unable to accept Energy from the SSO Supplier without jeopardizing Duke Energy Ohio's electrical system or a Connected Entity's electrical system.

"Emergency Energy" has the meaning set forth in the PJM Agreements.

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

"Energy Share Adjustment" means for any Billing Period, the monetary amount due to an SSO Supplier or Duke Energy Ohio, as the case may be, in order to reconcile any difference between the Estimated Monthly Energy Share used for the purpose of calculating estimated payments made to such SSO Supplier for a given month and the Final Monthly Energy Share used for calculating the final payments due to the SSO Supplier for such month, as more fully described in Article 6.

"Estimated Monthly Energy Share" means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the SSO Supplier's SSO Supplier Responsibility Share.

"Event of Default" has the meaning set forth in Section 7.1.

"Excess Collateral" has the meaning set forth in Section 5.7

"FERC" means the Federal Energy Regulatory Commission or such succeeding organization.

"Final Monthly Energy Share" means a quantity of Energy expressed in MWh which, for any Billing Period, is the Estimated Monthly Energy Share adjusted for any billing or metering errors found subsequent to the calculation of the Estimated Monthly Energy Share of which PJM is notified prior to the last date on which PJM issues a settlement statement for a previous operating day for the Billing Period.

"Firm Transmission Service" has the meaning ascribed to "Network Integration Transmission Service" under the PJM Agreements. In the event the PJM Agreements are modified such that "Network Integration Transmission Service" is no longer offered, Firm Transmission Service means the type of transmission service offered under the PJM Agreements that is accorded the highest level of priority for scheduling and curtailment purposes.

"Forward Market Prices" means forward market prices for a specific geographic Market Price Hub, as adjusted by Duke Energy Ohio to reflect impact of load shape.

"Gains" means an amount equal to the present value of the economic benefit to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

"Governmental Authority" means any federal, state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power over a Party to this Agreement.

"Guarantor" means any Person having the authority and agreeing to guarantee an SSO Supplier's financial obligations under this Agreement, provided that such party meets Duke Energy Ohio's creditworthiness requirements for SSO Suppliers.

"Guaranty" means the ICT Guaranty or the Total Exposure Guaranty, as applicable.

"ICR Collateral" has the meaning set forth in Section 5.4(d).

"ICRT" has the meaning set forth in Section 5.3.

"ICT Guaranty" means a guaranty, in the form substantially set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing an SSO Supplier's financial obligations in connection with ICT.

"Indemnification Losses" has the meaning set forth in Section 10.1(a).



"Indemnified Supplier" has the meaning set forth in section 10.1(b).

"Independent Credit Requirement or ICR" means an amount per Tranche required as security under Section 5.3, to mitigate the risk to Duke Energy Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by an SSO Supplier and the date the final calculation of Default Damages owing to Duke Energy Ohio under Section 7.2(c) is made.

"Independent Credit Threshold or ICT" means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.4, granted by Duke Energy Ohio to such SSO Supplier to be applied towards the satisfaction of such SSO Supplier's Independent Credit Requirement.

"Industrial Customer" means a Customer taking service under Duke Energy Ohio's non-residential rates (Rate DS, Rate DM, Rate DP, Rate EH, Rate GSFL, Rate SFL-ADPL, Rate RTP or Rate TS).

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

"Kilowatt or kW" means a unit of measurement of useful power equivalent to 1,000 watts.

"Kilowatt-hour or kWh" means one kilowatt of electric power used over a period of one hour.

"Legal Authorities" means, generally, those federal and Ohio statutes and administrative rules and regulations that govern the electric utility industry in Ohio.

"Letter of Credit" means a standby irrevocable letter of credit in the form set forth in Attachment E, or in such other form as Duke Energy Ohio deems acceptable in its sole discretion, and in each case conforming to all of the requirements specifically set forth in Section 5.9(b).

"LIBOR" means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits.

"Lighting Customer" means a Customer taking service under Duke Energy Ohio's lighting rates (Rate SL, Rate SC, Rate NSU, Rate NSP, Rate SE, Rate UOLS, or Rate TL).

"Load Serving Entity or LSE" has the meaning set forth in the applicable PJM Agreements.

"Losses" means an amount equal to the present value of the economic loss to the Non-Defaulting Party, if any, exclusive of Costs, resulting from an Early Termination.

"Margin" means, at any time, the amount by which the Total Exposure Amount exceeds the Credit Limit of the SSO Supplier or its Guarantor.

"Margin Call" has the meaning set forth in Section 5.6(d).

"Margin Collateral" has the meaning set forth in Section 5.6(d).

"Mark-to-Market Exposure Amount" means an amount calculated daily for each SSO Supplier reflecting the exposure to Duke Energy Ohio due to fluctuations in market prices for Energy as set forth in Section 5.5.

"Market Price Hub" means a liquid pricing point located within PJM's geographic footprint.

"Midwest ISO Tariff" means the Open Access Transmission, Energy and Operating Reserve Markets Tariff for the Midwest Independent Transmission System Operator, Inc., or the successor, superseding or amended versions of the Open Access Transmission, Energy and Operating Reserve Markets Tariff that may take effect from time to time.

"Minimum Margin Threshold" means \$100,000.

"Minimum Rating" means a minimum senior unsecured debt rating as defined in Section 5.4(a).

"MW" means megaWatt.

"MWh" means megaWatt hour.

"NERC" means the North American Electric Reliability Corporation or its successor.

"Non-Defaulting Party" means (i) where an SSO Supplier is the Defaulting Party, Duke Energy Ohio; (ii) where Duke Energy Ohio is the Defaulting Party with respect to an Event of Default, the SSO Supplier to which the applicable obligation was owed.

"Ohio Sales and Use Taxes" has the meaning set forth in Section 12.8.

"Original Delivery Period" has the meaning set forth in Attachment A.

"Other SSO Supply Agreement" has the meaning set forth in Section 7.3(c).

"Party" has the meaning set forth in the preamble to this Agreement, and includes such Party's successors and permitted assigns.

"Performance Assurance" means collateral in the form of cash, letters of credit, or other security reasonably acceptable to the Requesting Party.

"Person" means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

"PJM" means PJM Interconnection, L.L.C. or any successor organization thereto.

"PJM Agreements" means the PJM OATT, PJM Operating Agreement, PJM RAA and any other applicable PJM manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

"PJM Control Area" means the control area recognized by NERC as the PJM Control Area.

**"PJM E-Account"** means an account obtainable through PJM which provides access to web-based PJM settlement, accounting, marketing and other informational and economic systems.

**"PJM OATT or PJM Tariff"** means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

**"PJM Operating Agreement"** means the Amended and Restated Operating Agreement of PJM or the successor, superseding or amended versions of the Amended and Restated Operating Agreement that may take effect from time to time.

**"PJM RAA"** means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region or any successor, superseding or amended versions of the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region that may take effect from time to time.

**"Price"** means, with respect to each SSO Supplier, the price in \$/MWh set forth in Attachment A, resulting from Duke Energy Ohio's Solicitation for the opportunity to provide SSO Supply. The Price is the basis for financial settlement of SSO Supply supplied by an SSO Supplier for SSO Customers under this Agreement.

**"PUCO"** means the Public Utilities Commission of Ohio, or any successor thereto.

**"Residential Customer"** means a Customer taking service under Duke Energy Ohio's residential rates (Rate RS, Rate ORH, Rate TD, Rate TD-AM, Rate RS3P, or Rate RSLI).

**"Seasonal Billing Factor"** means a numerical factor, as set forth in Attachment B, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Price in accordance with the provisions of Article 6 and thereby used to adjust Duke Energy Ohio's payments to SSO Suppliers.

**"Settlement Amount"** means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination, calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and other components of SSO Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be determined by the Non-Defaulting Party in a commercially reasonable manner reflecting estimated SSO Load for un-switched customers as of the Early Termination Date based on the then most recent load switching report filed by Duke Energy Ohio with the PUCO as of the Early Termination Date. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 7.3(a).

**"Special Contract Customers"** means customers that take retail generation service from Duke Energy Ohio under terms and conditions different than the otherwise applicable tariff.

**"Specified Indebtedness"** with respect to a Party means as of any date, without duplication, (i) all obligations of such Party for borrowed money, (ii) all indebtedness of such Party for the deferred

purchase price of property or services purchased (excluding current accounts payable incurred in the ordinary course of business), (iii) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired, (iv) all indebtedness under leases which shall have been or should be, in accordance with generally accepted accounting principles, recorded as capital leases in respect of which such Party is liable as lessee, (v) the face amount of all outstanding letters of credit issued for the account of such Party (other than letters of credit relating to indebtedness included in indebtedness of such Party pursuant to another clause of this definition) and, without duplication, the unreimbursed amount of all drafts drawn thereunder, (vi) indebtedness secured by any lien on property or assets of such Party, whether or not assumed (but in any event not exceeding the fair market value of the property or asset), (vii) all direct guarantees of indebtedness referred to above of another Party, (viii) all amounts payable in connection with mandatory redemptions or repurchases of preferred stock or member interests or other preferred or priority equity interests and (ix) any obligations of such Party (in the nature of principal or interest) in respect of acceptances or similar obligations issued or created for the account of such Party.

"Solicitation" means the competitive bidding process by which the counterparty, quantity, pricing and other terms of this Agreement are established.

"SSO Customers" means Residential Customers, Commercial Customers, Industrial Customers and Lighting Customers, including Special Contract Customers, taking SSO Supply from Duke Energy Ohio during the Delivery Period.

"SSO Load" means the full electricity requirements for SSO Service of SSO Customers.

"SSO Service" means Standard Service Offer service that is not provided by a CRES Supplier.

"SSO Supplier" has the meaning set forth in the preamble.

"SSO Supplier Responsibility Share" means, for each SSO Supplier, the fixed percentage share of the SSO Load for which the SSO Supplier is responsible as set forth in Attachment A. The stated percentage is determined by dividing the number of Tranches won by the SSO Supplier in the Solicitation by the total number of Tranches.

"SSO Supply" means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by Duke Energy Ohio pursuant to Section 3.2, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that an SSO Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service.

"Standard Service Offer" means a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, and such other services or products that are provided by a CRES

Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

“Tangible Net Worth” or “TNW” means total assets less intangible assets and total liabilities. Intangible assets include benefits such as goodwill, patents, copyrights and trademarks, each as would be reflected on a balance sheet prepared in accordance with generally accepted accounting principles.

“Taxes” have the meaning set forth in Section 12.8.

“Term” has the meaning set forth in Section 2.1.

“Termination Payment” has the meaning set forth in Section 7.3(c).

“Total Exposure Amount” means an amount calculated daily for each SSO Supplier reflecting the total credit exposure to Duke Energy Ohio and consisting of the sum of: (i) the Mark-to-Market Exposure Amount arising under this Agreement; (ii) any amount(s) designated as the “mark-to-market exposure amount” (or similar designation) under any Other SSO Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other SSO Supply Agreement; less (iv) amounts due to such SSO Supplier pursuant to Section 6.1; provided that in the event the amount calculated for any day is a negative number, it shall be deemed to be zero for such day.

“Total Exposure Amount Guaranty” means a guaranty, in substantially similar form as set forth in Attachment D, provided by a Guarantor in favor of Duke Energy Ohio guaranteeing an SSO Supplier’s financial obligation with respect to its Total Exposure Amount.

“Tranche” means a fixed percentage share of the SSO Load, excluding Capacity, as determined for the purposes of the Solicitation conducted to procure SSO Supply for the SSO Load.

## ARTICLE 2

### TERM AND TERMINATION

#### 2.1 Term

The Term of this Agreement shall begin on the Effective Date and extend through and include the end of the Delivery Period (“Term”) unless terminated earlier or extended pursuant to the terms of this Agreement; provided, however, that the provision of SSO Supply by SSO Suppliers will commence on \_\_\_\_\_ at 12:01 a.m. prevailing Eastern Time.

#### 2.2 Mutual Termination

Duke Energy Ohio and any SSO Supplier may terminate this Agreement at any time during the Term on such terms and under such conditions as they mutually agree.

**2.3 Early Termination**

This Agreement may be terminated by a Party prior to the end of the Term due to an occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 7.2 (an "Early Termination").

**2.4 Effect of Termination**

The applicable provisions of this Agreement shall continue in effect and survive the termination of this Agreement to the extent necessary to provide for final accounting, billing, billing adjustments, resolution of any billing disputes, realization of any collateral or other security, set-off, final payments, or payments pertaining to liability and indemnification obligations arising from acts or events that occurred in connection with this Agreement during the Term.

**ARTICLE 3**

**GENERAL TERMS AND CONDITIONS**

**3.1 SSO Supplier's Obligations to Provide SSO Supply and Other Obligations**

Each SSO Supplier hereby agrees, severally, but not jointly, as follows:

(a) during the Delivery Period, such SSO Supplier shall sell, deliver and provide SSO Supply on a firm and continuing basis in order to meet its SSO Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) each SSO Supplier shall have no obligation to provide Capacity to Duke Energy Ohio;

(c) (i) each SSO Supplier's obligation under Section 3.1(a) will result in physical delivery and not financial settlement; (ii) the quantity of SSO Supply that such SSO Supplier must deliver will be determined by the requirements of the SSO Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by such SSO Supplier with respect to the quantity of SSO Supply to be delivered;

(d) each SSO Supplier shall be responsible for all other costs and expenses related to transmission and Ancillary Services in connection with the provision of SSO Supply in

proportion to its SSO Supplier Responsibility Share. PJM billing statement line items are set forth in Attachment F;

(e) during the Term, each SSO Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing, except for any changes to products, or the pricing of such products, that are the responsibility of Duke Energy Ohio pursuant to Section 3.2;

(f) each SSO Supplier is responsible for all transmission and distribution losses and congestion and imbalance costs incurred to supply its SSO Supplier Responsibility Share;

(g) each SSO Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM; (ii) qualified by PJM as a "Market Buyer" and "Market Seller" pursuant to the PJM Agreements, and (iii) qualified as a PJM "Load Serving Entity;"

(h) each SSO Supplier shall be responsible, and be liable, to PJM for the performance of its LSE obligations associated with the provision of SSO Supply under this Agreement; and

(i) each SSO Supplier shall have and maintain, throughout the Delivery Period, FERC authorization to make sales of Energy and Ancillary Services at market-based rates within PJM.

### **3.2 Duke Energy Ohio's Obligation to Take SSO Supply and other Obligations**

Duke Energy Ohio hereby agrees as follows:

(a) during the Delivery Period, Duke Energy Ohio shall purchase and receive, or cause to be received, the SSO Supply provided by an SSO Supplier pursuant to Section 3.1 at the Delivery Point and shall pay the SSO Supplier the Price;

(b) during the Delivery Period, Duke Energy Ohio shall be a member in good standing of PJM;

(c) Duke Energy Ohio shall be responsible for the provision of Firm Transmission Service from the Delivery Point;

(d) Duke Energy Ohio shall be responsible for procuring Capacity;

(e) Duke Energy Ohio shall be responsible, at its sole costs and expense, for:

(i) charges assessed under Schedule 1 (Scheduling, System Control and Dispatch Service), Schedule 1A (Transmission Owner Scheduling, System Control and

Dispatch Services), Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services), "Network Integration Transmission Service (NITS)" under the PJM Agreements, Schedule 11 (Transitional Market Expansion Charge) and Schedule 12 (Transmission Enhancement Charge) of the PJM Tariff;

(ii) Midwest ISO Transmission Expansion Plan (MTEP) charges assessed under Schedule 26 of the Midwest ISO Tariff, whether assessed directly by the Midwest Independent Transmission System Operator, Inc., PJM or American Transmission Systems, Incorporated;

(iii) other non-market-based costs, fees or charges imposed on or charged to Duke Energy Ohio by FERC or a regional transmission organization, independent transmission operator, or similar organization approved by FERC; and

(iv) such services and schedules as they may be modified or superseded from time to time;

(f) Duke Energy Ohio will be responsible for (i) metering, billing and delivery with respect to SSO Customers (and SSO Suppliers will have no responsibility with respect thereto) and (ii) distribution services (and SSO Suppliers will have no responsibility with respect thereto); and

(g) Duke Energy Ohio shall be responsible, at its sole cost and expense, for the provision of any renewable energy resource requirement as set forth in Ohio Rev. Code Ann. Sections 4928.64 and 4928.65 and regulations promulgated in respect thereto.

### **3.3 PJM E-Accounts**

Each SSO Supplier and Duke Energy Ohio shall work with PJM to establish any PJM E-Accounts necessary for such SSO Supplier to provide SSO Supply. Each SSO Supplier may manage its PJM E-Accounts in its sole discretion; provided such SSO Supplier acts in accordance with the standards set forth in the PJM Agreements.

### **3.4 Reliability Guidelines**

Each Party agrees to adhere to the applicable operating policies, criteria and guidelines of the NERC, PJM, their successors, and any regional and sub-regional requirements.

### **3.5 Regulatory Authorizations**



(a) Duke Energy Ohio and each SSO Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) Each SSO Supplier shall cooperate in good faith with Duke Energy Ohio in any regulatory compliance efforts as may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting requirement associated with the provision of SSO Supply before the PUCO, FERC or any other Governmental Authority.

### **3.6 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon Duke Energy Ohio relating to a default during the Term, Duke Energy Ohio may, in its sole discretion, invoice each SSO Supplier, based on its SSO Supplier Responsibility Share, for amounts determined, in Duke Energy Ohio's sole discretion, to be properly payable by such SSO Supplier from the Default Allocation Assessment and each SSO Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Section 11.

### **3.7 Status of SSO Supplier**

In order to meet Duke Energy Ohio's service obligations under Legal Authorities, it is the intent of the Parties that each SSO Supplier shall be deemed a LSE for the duration of the Delivery Period pursuant to the PJM Agreements and Legal Authorities.

### **3.8 Sales for Resale**

All SSO Supply provided by an SSO Supplier to Duke Energy Ohio shall be sales for resale, with Duke Energy Ohio reselling such SSO Supply to SSO Customers.

## **ARTICLE 4**

### **SCHEDULING, FORECASTING AND INFORMATION SHARING**

#### **4.1 Scheduling**

(a) Each SSO Supplier shall schedule SSO Supply and make all necessary arrangements for the delivery of SSO Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

(b) Duke Energy Ohio will provide to each SSO Supplier and to PJM all information required by PJM for the purpose of calculating each SSO Supplier's SSO Supply obligations, including the magnitude and location of each SSO Supplier's SSO Supply obligation, as required by the PJM Office of Interconnection.

#### **4.2 Load Forecasting**

Duke Energy Ohio shall not be required to provide to any SSO Supplier any load forecasting services.

#### **4.3 Disconnection and Curtailment by Duke Energy Ohio**

Duke Energy Ohio shall have the right, without incurring any liability to any SSO Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the SSO Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever Duke Energy Ohio determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of Duke Energy Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of Duke Energy Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of Duke Energy Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when Duke Energy Ohio is directed by PJM. Duke Energy Ohio shall not show any preference for any Affiliate in connection with any such disconnection, curtailment or reduction.

#### **4.4 Loss of Service to SSO Customers**

The Parties agree and acknowledge that service to SSO Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of Duke Energy Ohio affecting the transmission and distribution facilities of Duke Energy Ohio. No Party will have any liability to any other Party for the occurrence of such events. In no event

will a loss of service to a Customer affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such loss of service.

#### **4.5 PJM Requirements**

The Parties acknowledge and agree that, as members of PJM, each of them is bound by the PJM Agreements and any other operating instructions, policies and procedures set forth by PJM. Each SSO Supplier acknowledges and agrees that it will cooperate with Duke Energy Ohio, PJM and the applicable balancing authority and reliability coordinator so that Duke Energy Ohio will be in compliance with all PJM emergency operations procedures, which include procedures pertaining to minimum and maximum generation Emergencies, and measures requiring involuntary Customer participation, such as supply voltage reduction and full interruption of Customer load by either manual or automatic means.

#### **4.6 Compliance with Governmental Directives**

Each SSO Supplier acknowledges and agrees that Duke Energy Ohio may need to act in response to directives by a Governmental Authority that may affect SSO Supply or SSO Load. Each SSO Supplier agrees to cooperate fully with Duke Energy Ohio in order to comply with such directives.

### **ARTICLE 5**

#### **CREDIT AND PERFORMANCE SECURITY**

##### **5.1 Applicability**

Each SSO Supplier agrees that it will meet the creditworthiness standards of this Article 5 at all times during the Term and will inform Duke Energy Ohio immediately of any changes in its credit rating or financial condition. Without limiting the foregoing, each SSO Supplier shall, upon the written request of Duke Energy Ohio, affirmatively demonstrate to Duke Energy Ohio in a manner satisfactory to Duke Energy Ohio its compliance with the creditworthiness standards set forth hereunder. Duke Energy Ohio may establish less restrictive creditworthiness standards under this Article 5 in a non-discriminatory manner.

During the Term, each SSO Supplier or its Guarantor, if applicable, that has been granted an Independent Credit Threshold or a Credit Limit agrees to provide as soon as practicable (i)

after the end of each fiscal year, complete annual audited financial statements (including footnotes), and (ii) after the end of each fiscal quarter, complete quarterly unaudited financial statements (including footnotes). If such financial statements are readily and timely available from the SSO Supplier's website or other public website such as [www.sec.gov](http://www.sec.gov), then this requirement shall be deemed to be satisfied.

## **5.2 Creditworthiness Determination**

Duke Energy Ohio will determine the creditworthiness of an SSO Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). Duke Energy Ohio will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by Duke Energy Ohio of its or its Guarantor's creditworthiness. Duke Energy Ohio's credit re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30) days after receiving a fully documented request. Duke Energy Ohio shall provide the rationale for its determination of the Credit Limit and any resulting security requirement and such determination shall be deemed final and conclusive. Duke Energy Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each SSO Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, Duke Energy Ohio may specify other types of financial statements that will be accepted. If Duke Energy Ohio determines in its sole discretion that it is unable to adequately assess an SSO Supplier's or Guarantor's creditworthiness or the credit rating of an SSO Supplier or its Guarantor is insufficient, such SSO Supplier shall be required to post ICR Collateral in accordance with Section 5.4(d) and Margin Collateral in accordance with Section 5.7.

## **5.3 Independent Credit Requirement**

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of each SSO Supplier under this Agreement will initially be \$500,000 per Tranche for the Original Delivery Period and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1. The ICR under this Agreement for each SSO Supplier is the ICRT times the number of Tranches shown in Attachment A.

#### **5.4 Independent Credit Threshold**

Each SSO Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold ("ICT").

(a) For an SSO Supplier or its Guarantor that has been organized under the laws of the United States, the following requirements must be satisfied in order for such SSO Supplier to be granted an ICT:

i. the SSO Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch"), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) of at least "BB" from S&P, "Ba2" from Moody's, or "BB" from Fitch (a "Minimum Rating"). If the SSO Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the SSO Supplier or its Guarantor is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the ICT will be determined based on the following table:

Credit Rating of the SSO Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	Not applicable
BBB+	Baa1	BBB+	10%	Not applicable

BBB	Baa2	BBB	10%	Not applicable
BBB-	Baa3	BBB-	8%	Not applicable
BB+	Ba1	BB+	2%	\$3,000,000
BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

ii. for SSO Suppliers having a Guarantor, the maximum level of the ICT that can be granted based on an ICT Guaranty will be determined in accordance with subsection (i) above, with reference to the credit rating of the Guarantor.

The ICT granted to the SSO Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the SSO Supplier to satisfy the ICT requirement arising under this Section 5.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the SSO Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 5.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

(b) For an SSO Supplier or its Guarantor that has not been organized under the laws of the United States, the following requirements must be satisfied in order for such SSO Supplier to be granted an ICT:

i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or

ii. the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized

under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(c) All SSO Suppliers or Guarantors of SSO Suppliers that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.4, supply the following to Duke Energy Ohio as a condition of being granted an ICT:

i. for an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign jurisdiction and does not violate any local law or the SSO Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the Person executing this Agreement on behalf of the SSO Supplier has the authority to execute this Agreement and that the governing board of such SSO Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

ii. for the Guarantor of an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the ICT Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the ICT Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the ICT Guaranty on behalf of the Guarantor has the authority to execute the

ICT Guaranty and that the governing board of such Guarantor has approved the execution of the ICT Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) SSO Suppliers who do not qualify for an ICT or whose ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 5.9 to satisfy its aggregate ICR under this Agreement and any Other SSO Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other SSO Supply Agreement, must post ICR Collateral at the time of or prior to the Effective Date to the extent its aggregate ICR under this Agreement and any Other SSO Supply Agreement exceeds its ICT.

#### **5.5 Mark-to-Market Credit Exposure Methodology**

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. A "market value" for each Tranche will be determined at the time the Solicitation is completed based on the then prevailing market prices, as described further in Attachment C-2. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each SSO Supplier shall be set equal to zero. Subsequently, the differences between the prevailing market prices on a valuation date and the market prices in effect on the date the Solicitation is completed will be used to calculate the Mark-to-Market Exposure Amounts for each SSO Supplier, as described further in Attachment C-2. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Period, or portion thereof, remaining during the Original Delivery Period. Forward Market Prices will be determined with reference to publicly available market price quotations obtained by Duke Energy Ohio, as adjusted by Duke Energy Ohio to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. Such adjustment is further described in Attachment C-2. However, if market price quotations are not publicly available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The Mark-to-Market Exposure Amount will also be adjusted on a monthly basis to reflect changes in expected SSO Load by means of a volume adjustment factor. The Mark-to-Market



Exposure Amount will be stated on a present value basis by discounting using the then-prevailing LIBOR rate. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Attachment C-2.

## **5.6 Credit Limit**

The following criteria constitute Duke Energy Ohio's creditworthiness requirements for the SSO Suppliers to cover the Total Exposure Amount:

(a) for SSO Suppliers to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other performance assurances acceptable to Duke Energy Ohio, in the case of an SSO Supplier organized under the laws of the United States, the SSO Supplier must (1) be rated by S&P, Moody's or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) equal to the Minimum Rating. If the SSO Supplier is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the SSO Supplier is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the SSO Supplier or its Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	\$60,000,000
BBB+	Baa1	BBB+	10%	\$50,000,000
BBB	Baa2	BBB	10%	\$40,000,000
BBB-	Baa3	BBB-	8%	\$30,000,000
BB+	Ba1	BB+	2%	\$5,000,000

BB	Ba2	BB	1%	\$2,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

The SSO Supplier will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(b) for SSO Suppliers delivering a Total Exposure Amount Guaranty, in the case of a Guarantor organized under the laws of the United States, the maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total Exposure Amount Guaranty will be determined in accordance with subsection (a) above, with reference to the credit rating of the Guarantor, except that the Credit Limit granted to the SSO Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

(c) for an SSO Supplier or Guarantor, if applicable, that has not been organized under the laws of the United States, the following standards will apply:

i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or

ii. if the SSO Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

(d) All SSO Suppliers or Guarantors of SSO Suppliers, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 5.6, supply the following to Duke Energy Ohio:

i. For an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the SSO Supplier is organized that (A) the SSO Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the SSO Supplier in such foreign jurisdiction and does not violate any

local law or the SSO Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of this Agreement and the performance by the SSO Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such SSO Supplier that the Person executing this Agreement on behalf of the SSO Supplier has the authority to execute this Agreement and that the governing board of such SSO Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

ii. For the Guarantor of an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the Total Exposure Amount Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Total Exposure Amount Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the Total Exposure Amount Guaranty on behalf of the Guarantor has the authority to execute the Total Exposure Amount Guaranty and that the governing board of such Guarantor has approved the execution of the Total Exposure Amount Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

For an SSO Supplier with a Total Exposure Amount Guaranty, the SSO Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to Duke Energy Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to Duke Energy Ohio

during the Term. The SSO Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing its applicable Credit Limit during the time period after Duke Energy Ohio has made a demand of the SSO Supplier to cover Margin (a "Margin Call") but before the SSO Supplier has provided Duke Energy Ohio with cash credited to a deposit account of Duke Energy Ohio or a Letter of Credit in accordance with Section 5.9, in each case in an amount equal to the Margin (the "Margin Collateral"). Notwithstanding anything herein to contrary, the SSO Supplier may increase the limit of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon Duke Energy Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the limit of the Total Exposure Amount Guaranty, the SSO Supplier may request a return of Margin Collateral in accordance with Section 5.7. The SSO Suppliers will be required to post cash or a Letter of Credit for the Margin due Duke Energy Ohio as set forth in Section 5.7 of this Agreement.

(e) Under no circumstances shall the Credit Limit plus any other credit limit granted to the SSO Supplier under any Other SSO Supply Agreement exceed the Credit Limit hereunder.

**5.7 Posting Margin Collateral and Return of Excess Collateral**

If at any time and from time to time during the Delivery Period, Margin exists with respect to an SSO Supplier, then Duke Energy Ohio on any Business Day may make a Margin Call of such SSO Supplier; provided however that Duke Energy Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable SSO Supplier shall provide to Duke Energy Ohio Margin Collateral, which shall comprise of cash or a Letter of Credit. The Margin Collateral shall be in the amount equal to the Margin less the amount of any Margin Collateral already posted by the SSO Supplier in which Duke Energy Ohio has a first priority, perfected security interest to secure the obligations of the SSO Supplier under this Agreement and any Other SSO Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If an SSO Supplier receives a Margin Call from Duke Energy Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then such SSO Supplier shall post Margin Collateral the following Business Day if posting cash and the second Business Day following the Margin Call if posting a Letter of Credit, unless in each case Duke Energy Ohio agrees in writing to

extend the period to provide Margin Collateral. If the SSO Supplier receives a Margin Call after 1:00 p.m. prevailing Eastern Time on a Business Day, whether posting cash or a Letter of Credit, then the SSO Supplier must post Margin Collateral on the second Business Day following the Margin Call unless Duke Energy Ohio agrees in writing to extend the period to provide Margin Collateral. Duke Energy Ohio will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by Duke Energy Ohio that is not needed to satisfy the Margin ("Excess Collateral"), will be returned to the SSO Supplier upon receipt of a written request from the SSO Supplier; provided, however, that the SSO Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the SSO Supplier posted cash and notice is received by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the SSO Supplier posted cash and notice is received by Duke Energy Ohio after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business Day following the date of notice. If the SSO Supplier posted a Letter of Credit, the Excess Collateral shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank, unless in each case the SSO Supplier agrees in writing to extend such period for returning the Excess Collateral. The SSO Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

#### **5.8 Grant of Security Interest; Remedies**

To secure its obligations under this Agreement, the SSO Supplier hereby grants to Duke Energy Ohio a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of Duke Energy Ohio or partially in the name of Duke Energy Ohio or held for the benefit of Duke Energy Ohio and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by Duke Energy Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The SSO Supplier agrees to take such action as reasonably

required to create and perfect Duke Energy Ohio's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where an SSO Supplier is the Defaulting Party or an Early Termination Date (whether or not such SSO Supplier was the Defaulting Party), Duke Energy Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of Duke Energy Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such SSO Supplier in the possession of Duke Energy Ohio, whether held in connection with this Agreement or any Other SSO Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such SSO Supplier; and (ii) draw on any outstanding Letter of Credit provided by such SSO Supplier. Duke Energy Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such SSO Supplier's obligations under this Agreement and under any Other SSO Supplier Agreement, and such SSO Supplier shall remain liable for any amounts owing to Duke Energy Ohio after such application, subject to Duke Energy Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit-related security or deposit transfers shall be sent in accordance with Section 12.2.

#### **5.9 Acceptable Forms of Security**

At each SSO Supplier's option, the following are deemed to be acceptable for posting Margin Collateral or ICR Collateral, if required:

- (a) Cash credited to a deposit account of Duke Energy Ohio; and
- (b) A Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If Duke Energy Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the SSO Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in this Section 5.9. The receipt of the substitute Letter of Credit

must be effective as of the cancellation date and delivered to Duke Energy Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the SSO Supplier fails to supply a substitute Letter of Credit as required, then Duke Energy Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Margin Collateral or ICR Collateral, as applicable.

The Letter of Credit shall be issued by a U.S. commercial bank or by a U.S. branch of a foreign bank with total assets of at least \$5 billion having a general long-term senior unsecured debt rating of A- or higher as rated by S&P or A3 or higher as rated by Moody's and shall permit presentation at a bank located in the United States of America.

If at any time the bank or other financial institution from which an SSO Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the SSO Supplier will immediately notify Duke Energy Ohio and, within one (1) Business Day of the failure of the financial institution to meet the required conditions, obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by Duke Energy Ohio.

Notwithstanding anything in this Agreement to the contrary, Duke Energy Ohio may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged prior to applying any cash collateral against, or making a drawing under any letter of credit in respect of, any liabilities of the SSO Supplier hereunder or its Guarantor under the guaranty to Duke Energy Ohio or any of them.

#### **5.10 Reporting; Maintenance of Creditworthiness**

(a) Each SSO Supplier must promptly notify Duke Energy Ohio of any change in its or its Guarantor's credit rating or financial condition. The SSO Supplier or Guarantor must also furnish evidence of an acceptable credit rating or financial condition upon the request of Duke Energy Ohio.

(b) If the lowest credit rating (whether corporate or issuer rating or unsecured senior debt rating) used to determine the SSO Supplier's ICT or its Credit Limit adversely changes, Duke Energy Ohio will require ICR Collateral or Margin Collateral from such SSO Supplier in

accordance with Sections 5.4, 5.6 and 5.7. The additional security must be in a form acceptable to Duke Energy Ohio, as specified in Section 5.9.

**5.11 Interest on Cash Held by Companies**

Duke Energy Ohio will pay simple interest calculated at the lower of the Interest Rate or 6% per annum on all cash held by Duke Energy Ohio pursuant to this Agreement. If applicable, each Billing Period the SSO Supplier will prepare a statement of interest amounts due from Duke Energy Ohio. The statement will be sent to Duke Energy Ohio within three (3) Business Days after the end of the Billing Period via overnight mail or other expeditious means. Duke Energy Ohio will make interest payments on the first Business Day after the fifth (5<sup>th</sup>) day of each calendar month.

**5.12 No Endorsement of SSO Supplier**

Duke Energy Ohio's determination of an SSO Supplier's creditworthiness pursuant to the process set forth in this Article 5 will not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of such SSO Supplier. Duke Energy Ohio will treat all SSO Suppliers in a non-discriminatory manner and shall provide no preference to any SSO Supplier.

**ARTICLE 6**

**BILLING, PAYMENT AND NETTING**

**6.1 Invoice Statement**

Subject to Section 6.2, Duke Energy Ohio and each SSO Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

(a) For each Billing Period, Duke Energy Ohio will prepare and provide an invoice to each SSO Supplier, which will show (i) amounts due to the SSO Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the Estimated Monthly Energy Share, (ii) the Energy Share Adjustment from such Billing Period, if any, and (iii) all Charges due to Duke Energy Ohio incurred during the Billing Period (the "Billing Statement").

(b) Duke Energy Ohio will determine the total amount payable by one Party to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate



amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. For any amounts due and owing Duke Energy Ohio, Duke Energy Ohio will specify in each Billing Statement how the amounts will be allocated among the SSO Suppliers. In the case of the Energy Share Adjustment, the allocation will be based on the respective SSO Loads of Duke Energy Ohio.

(c) The Billing Statement will be sent to each SSO Supplier within six (6) Business Days after the end of the Billing Period.

(d) Duke Energy Ohio or the SSO Supplier, as the case may be, will make payment on or before the twentieth (20<sup>th</sup>) day of each calendar month. If such day falls on a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are closed, payment will be due the following Business Day. All such payments shall be made by electronic transfer to an account designated in writing by each respective Party.

(e) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the errors become known within one (1) year of the earlier of (i) the end of the Term or (ii) the Early Termination Date.

(f) Overdue payments shall accrue interest at the Interest Rate from, and including, the due date, but excluding date of payment.

(g) If a good faith dispute arises between Duke Energy Ohio and the SSO Supplier regarding a Billing Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Billing Statement, if any, no later than the due date and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Billing Statement in dispute. Billing Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 11. Upon resolution of a Billing Statement dispute, any payments made to either Party will include interest at the Interest Rate on the payment payable from the date that notice of a Billing Statement dispute was received by the non-disputing Party.

(h) Notwithstanding anything to the contrary contained in this Section 6.1, the determination of the allocation among Duke Energy Ohio of amounts due and owing to Duke Energy Ohio, as set forth in a Billing Statement, will be final and binding, absent manifest error.

## **6.2 PJM Billing: Third Party Billing**

(a) Duke Energy Ohio and each SSO Supplier shall direct PJM to invoice Duke Energy Ohio and such SSO Supplier for PJM charges and credits relating to such SSO Supplier's and Duke Energy Ohio's rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, Duke Energy Ohio shall rectify such PJM invoice discrepancy in the Billing Statement sent pursuant to Section 6.1.

(b) The Parties agree that the PJM invoice may change from time to time. Allocation of any charges that are reflected in a PJM invoice that are not included on or are inconsistent with Attachment F will be determined pursuant to Sections 3.1(d), 3.1(e), 3.1(f), 3.2(e) and 12.6.

(c) Duke Energy Ohio shall have no responsibility for billing between an SSO Supplier and any other third party. Duke Energy Ohio shall be solely responsible for billing SSO Customers for SSO Supply.

## **ARTICLE 7**

### **BREACH AND DEFAULT**

#### **7.1 Events of Default**

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

(a) the failure of the Defaulting Party to make, when due, any payment required pursuant to this Agreement (including under Section 6.2) if such failure is not remedied within two (2) Business Days after receipt of written notice of non-payment, and provided the payment is not the subject of a good faith dispute as described in Section 6.1;

(b) any representation or warranty made by the Defaulting Party herein is false or misleading in any material respect when made;

(c) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (other than events that are otherwise specifically covered in this Article 7 as a separate Event of Default) if such failure is not remedied within two (2) Business Days after written notice;

(d) the Defaulting Party becomes Bankrupt;

(e) with respect to an SSO Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to Duke Energy Ohio, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 5.7;

(f) failure of the Defaulting Party to comply with its obligations pursuant to Article 5 (except to the extent constituting a separate Event of Default under Section 7.1(e)) if such failure is not remedied within three (3) Business Days after receipt of written notice of such failure;

(g) the failure of the Defaulting Party to comply with the requirements of Sections 3.1(g), 3.1(h), 3.1(i) and 3.5, as applicable, if such failure is not remedied within three (3) Business Days of such failure;

(h) PJM has declared the Defaulting Party to be in default of any provision of any PJM Agreement, which default prevents the Defaulting Party's performance hereunder, if such failure is not remedied within three (3) Business Days after written notice;

(i) PJM holds Duke Energy Ohio responsible for the provision of SSO Supply, including Energy and Ancillary Services, to meet the Defaulting Party's SSO Supplier Responsibility Share under this Agreement;

(j) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of the Defaulting Party or its Guarantor, if applicable, under one or more agreements or instruments, individually or collectively, relating to Specified Indebtedness in an aggregate amount of not less than the applicable Cross Default Amount, which results in such Specified Indebtedness becoming immediately due and payable; (ii) a default by the Defaulting Party or its Guarantor, if applicable, in making on the due date therefor one or more payments in respect of any obligation under contract or at law, individually or collectively, in an aggregate amount of not less than the applicable Cross Default Amount; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under the Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other SSO Supply Agreement; and

(k) with respect to a Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) the failure of such Guarantor's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party

under this Agreement without the written consent of Duke Energy Ohio; (iv) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or (v) such Guarantor becomes Bankrupt.

## **7.2 Remedies Upon an Event of Default**

If an Event of Default shall have occurred and be continuing, the Non-Defaulting Party shall have the right to:

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 7.1(a) or (d);

(b) declare an Early Termination and designate by written notice an Early Termination Date which shall be no earlier than the day such designation notice is effective and no later than twenty (20) calendar days after such notice is effective; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only declare on Early Termination if the default of the Defaulting Party constitutes an Event of Default under Section 7.1(a) or (d);

(c) calculate and receive from the Defaulting Party payment for any Default Damages which the Non-Defaulting Party incurs as of the date of the event giving rise to the Event of Default, until the earlier of; (i) the Early Termination Date (if applicable); (ii) the date the Event of Default has been cured by the Defaulting Party; or (iii) the date the Non-Defaulting Party waives such Event of Default;

(d) withhold any payments due to the Defaulting Party under this Agreement as a set-off against any Default Damages, or Termination Payment, as applicable, the Defaulting Party is entitled to receive;

(e) draw down, liquidate, set-off against, or demand payment under, any Guaranty, ICR Collateral and Margin Collateral; and

(f) exercise any other remedies at law or in equity.

## **7.3 Default Damages; Settlement Amount; Termination Payment**

(a) **Default Damages.** Subject to Section 7.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The

invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 7.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii) withhold any payments due to the Defaulting Party under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the Defaulting Party's obligations under the Agreement and shall net the Settlement Amount in the manner provided for in Section 7.3(c).

(c) **Termination Payment.** The Non-Defaulting Party will calculate a single payment (the "Termination Payment") by netting out (i) the sum of the Settlement Amount under this Agreement payable to the Defaulting Party, plus (a) similar settlement amounts payable to the Defaulting Party under any other agreements between Duke Energy Ohio and the applicable SSO Supplier for the provision of SSO Supply or similar service (each, an "Other SSO Supply Agreement") being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Non-Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received, liquidated and retained by the Non-Defaulting Party, plus (c) any or all other amounts due to the Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, plus (a) similar settlement amounts payable to the Non-Defaulting Party under any Other SSO Supply Agreement being terminated due to the event giving rise to the Event of Default plus, (b) at the option of the Non-Defaulting Party, any Performance Assurance then available to the Defaulting Party under this Agreement or Other SSO Supply Agreements and actually received, liquidated and retained by the Defaulting Party, plus (c) any or all other amounts due to the Non-Defaulting Party under this Agreement and, at the option of the Non-Defaulting Party, Other SSO Supply Agreements.

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an SSO Supplier is the Defaulting Party and the Termination Payment is due to such SSO Supplier, Duke Energy Ohio will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as a security for additional amounts that may be determined to be due and owing by such SSO Supplier as Default Damages; and further provided that any previously attached security interest of Duke Energy Ohio in such retained amounts will continue. If the Termination Payment has been retained by Duke Energy Ohio as security for additional amounts that may be determined to be due and owing by the SSO Supplier, and if, upon making a final determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the SSO Supplier, Duke Energy Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the SSO Supplier for the period of such retention.

(d) **Notice of Termination Payment.** As soon as practicable after calculation of the Termination Payment, notice must be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 7.3(e), the Termination Payment must be made by the Party that owes it within three (3) Business Days after such notice is received by the Defaulting Party.

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute under this Section 7.3(e) shall be subject to the dispute resolution procedures in Article 11; provided, however, that if the Default Damages or Termination Payment is due from the Defaulting Party, the Defaulting Party must first provide Performance Assurance to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be.

**7.4 SSO Supplier Right to Assume**

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by Duke Energy Ohio with respect to such SSO Supplier, then Duke Energy Ohio, subject to Legal Authorities, may offer all of the non-defaulting SSO Suppliers the right to assume under this Agreement additional Tranches of SSO Load, subject to further compliance with the creditworthiness provisions of Article 5. If more than one SSO Supplier is interested in assuming the additional Tranches of SSO Load and the Parties are unable to agree on an allocation of such additional Tranches, then Duke Energy Ohio shall utilize a blind lottery process to determine which SSO Suppliers shall serve the additional Tranches of SSO Load. The provision of any such offer by Duke Energy Ohio to non-defaulting SSO Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by one or more SSO Suppliers of additional Tranches hereunder, such SSO Supplier(s) and Duke Energy Ohio shall execute an amendment to this Agreement modifying Attachment A to reflect the revised SSO Supplier Responsibility Share of the non-defaulting SSO Supplier(s) accepting such offer. An SSO Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume additional Tranches upon the default of another SSO Supplier.

**7.5 Setoff of Payment Obligations of the Non-Defaulting Party**

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement will be set off: (i) first, to satisfy any payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under any Other SSO Supply Agreement that are unsecured, but which are guaranteed by a Guaranty; and (iii) third, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement or any Other SSO Supply Agreement.

**7.6 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including Sections 7.2, 7.3 and 7.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off

afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

#### 8.1 Duke Energy Ohio's Representations and Warranties

Duke Energy Ohio hereby represents and warrants to the SSO Suppliers as follows:

(a) it is an electric utility corporation duly organized, validly existing and in good standing under the laws of the State Ohio;

(b) it has all requisite power and authority necessary for it enter into and to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

(c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitute its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(f) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;



(g) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of any other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(h) at the commencement of the Original Delivery Period, it has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; and

(i) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## **8.2 SSO Supplier Representations and Warranties**

Each SSO Supplier hereby represents and warrants to Duke Energy Ohio as follows:

(a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and, if organized outside the State of Ohio, is qualified to conduct its business and is in good standing in Ohio;

(b) it has all regulatory authorizations and all requisite power and authority necessary for it to legally perform its obligations under this Agreement and any other documentation relating to this Agreement;

(c) the execution, delivery and performance of this Agreement and any other documentation relating to this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any law, rule, regulation, order or similar provision of any Governmental Authority;

(d) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms;

(e) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;

(f) there is not pending or, to its knowledge, threatened against it or any of its Affiliates any legal proceedings, including before a Governmental Authority, that could materially adversely affect its ability to perform its obligations under this Agreement or any other document relating to this Agreement;

(g) no Event of Default or event with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or any other document relating to this Agreement;

(h) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of Duke Energy Ohio in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

(i) at the commencement of the Original Delivery Period, it (i) has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; (ii) is a member in good standing with PJM; (iii) is qualified by PJM as a "Market Buyer" and "Market Seller" pursuant to the PJM Agreements; (iv) is qualified as a PJM "Load Serving Entity;" and (v) has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM; and

(j) it is not in violation of any law, rules, regulations, ordinances or judgments of any Governmental Authority which could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement.

## ARTICLE 9

### RISK OF LOSS; LIMITATION OF LIABILITY

#### 9.1 Risk of Loss

Title and risk of loss with respect to the SSO Supply shall pass from each SSO Supplier to Duke Energy Ohio when the SSO Supply is delivered to the Delivery Point. As between the Parties, each SSO Supplier shall be deemed to be in exclusive control and possession of the SSO

Supply prior to and at the Delivery Point, and Duke Energy Ohio shall be deemed to be in exclusive control and possession of the SSO Supply from the Delivery Point. Each SSO Supplier warrants that it will deliver the SSO Supply to Duke Energy Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

## **9.2 Limitation of Liability**

EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, INCLUDING ARTICLE 10, AS BETWEEN DUKE ENERGY OHIO AND EACH SSO SUPPLIER, EACH PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES INCURRED AS A RESULT OF A PARTY'S FAILURE TO COMPLY WITH THIS AGREEMENT. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. NO PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, ARISING OUT OF SUCH PARTY'S FAILURE TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, NOTHING HEREIN SHALL IMPOSE ANY OBLIGATION OR LIABILITY FROM ONE SSO SUPPLIER TO ANY OTHER SSO SUPPLIER, EXCEPT AS PROVIDED IN ARTICLE 10.

## **ARTICLE 10**

### **INDEMNIFICATION**

#### **10.1 Indemnification**

(a) Each SSO Supplier shall defend, save harmless and indemnify Duke Energy Ohio and its Affiliates, shareholders, managers, directors, officers, employees and agents (collectively, the "Duke Energy Ohio Indemnified Party") against and from any and all of the following incurred by the Duke Energy Ohio Indemnified Party solely as a result of a third party claim (including PJM and each other SSO Supplier) against the Duke Energy Ohio Indemnified Party: loss, liability, damage, claim, cost, charge, demand or expense (including reasonable attorneys' fees) (collectively "Indemnification Losses") for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of the SSO Suppliers or their respective Affiliates,

managers, directors, officers, employees and agents and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by the SSO Suppliers or for which the SSO Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of Duke Energy Ohio. Duke Energy Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) Duke Energy Ohio and each SSO Supplier shall defend, save harmless and indemnify each other SSO Supplier and its Affiliates, shareholders, managers, directors, officers, employees and agents (the "Indemnified Supplier") against and from any and all of the following incurred by the Indemnified Supplier solely as a result of a third party claim (including another SSO Supplier) against the Indemnified Supplier: Indemnification Losses for injury or death to persons and damage to property including a Party's employees or any third party to the extent (i) caused by any act or omission (or alleged act or omission) of Duke Energy Ohio or such SSO Supplier or their respective Affiliates, managers, directors, officers, employees and agents, and (ii) such Indemnification Losses arise out of or are in any manner connected with the performance of this Agreement by Duke Energy Ohio or such SSO Supplier or for which the SSO Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the

indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

## **ARTICLE 11**

### **DISPUTE RESOLUTION**

#### **11.1 Informal Dispute Resolution**

If a dispute arises between the Parties relating to this Agreement, a Party shall give the other Party written notice of a dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then either Party may pursue any remedies available at law or in equity as set forth below.

#### **11.2 Formal Dispute Resolution**

After the requirements of Section 11.1 have been satisfied, all disputes between the Parties, except where this Agreement requires otherwise, shall be submitted to an Ohio State court of competent jurisdiction or to a federal court of competent jurisdiction situated in the State

of Ohio, which courts shall have exclusive jurisdiction to settle disputes arising under or related to this Agreement.

**11.3 Recourse to Agencies or Courts of Competent Jurisdiction**

Notwithstanding Section 11.2, nothing in this Agreement shall restrict the rights of a Party to file a complaint with the FERC under relevant provisions of the Federal Power Act or with the PUCO under relevant provisions of the Legal Authorities. The Parties' agreement under this Section 11.3 is without prejudice to any Party's right to contest jurisdiction of the FERC or PUCO to which a complaint is brought.

**ARTICLE 12**

**MISCELLANEOUS PROVISIONS**

**12.1 Assignment**

(a) Duke Energy Ohio may not assign this Agreement or its rights or obligation hereunder without the prior written consent of the applicable SSO Suppliers, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, Duke Energy Ohio may, without the consent of the SSO Suppliers (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of Duke Energy Ohio. Under (a)(ii) and (a)(iii) above, Duke Energy Ohio shall be relieved of its obligations upon the assignment and assumption of the assignee, except for those obligations which have arisen prior to the date of assignment.

(b) An SSO Supplier may not assign this Agreement or any rights or obligation hereunder without the prior written consent of Duke Energy Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, an SSO Supplier may, without the consent of Duke Energy Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or

substantially all of the assets of such SSO Supplier. Under (b)(ii) and (b)(iii) above, the assigning SSO Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

## 12.2 Notices

All notices, requests, statements or payments shall be made as specified below. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form. Notice by regular mail shall be deemed to have been received by the earlier of actual receipt or three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight mail or courier shall be deemed to have been received by the earlier of actual receipt or two (2) Business Days after it has been sent. A Party may change its addresses by providing notice of the same in accordance with this Section 12.2.

To Duke Energy Ohio:

### **NOTICES & CORRESPONDENCE:**

Duke Energy Ohio, Inc.  
Mail Code: EA\_\_\_\_\_

139 East Fourth Street (45202)  
P.O. Box 960 (45201)  
Cincinnati, OH  
Attention: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

### **INVOICES:**

Attention: \_\_\_\_\_  
Mail Code: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

### **CREDIT:**

### **PAYMENTS:**

Account No: \_\_\_\_\_  
ABA No: \_\_\_\_\_

### **SCHEDULING:**

Attention: \_\_\_\_\_  
Mail Code: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

Attention: \_\_\_\_\_  
Mail Code: \_\_\_\_\_  
Fax Number: \_\_\_\_\_  
Phone Number: \_\_\_\_\_

**To SSO Supplier:**

Each SSO Supplier's notification information is set forth on Attachment A.

**12.3 General**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior communications and proposals (oral or written). This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision declared or rendered unlawful by any applicable Governmental Authority or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.

**12.4 Governing Law**

To the extent not subject to the jurisdiction of FERC, this Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law.

**12.5 Standard of Review**

Except as provided in Sections 7.4 and 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in 12.6, the rates, terms and conditions contained in



this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act, absent the written agreement of the Parties to change any provisions. Other than as expressly permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

#### **12.6 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any term, schedule or section reference herein to such agreement is changed, such term, schedule or section reference herein shall be deemed automatically (and without any further action by the Parties) to refer to the new term, schedule or section of the PJM Agreements.

(b) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, the Parties shall cooperate to make the conforming changes to this Agreement.

#### **12.7 Confidentiality**

(a) The Parties shall hold in confidence any information disclosed by one Party to the other Party in connection with negotiation of or performance under this Agreement unless (i) required, pursuant to any applicable court order, administrative order, statute, regulation or other official order by any government or any agency or department thereof, to disclose; (ii) such information is already in the possession of the receiving party at the time of disclosure, as evidenced by the receiving party’s written documentation; (iii) such information becomes subsequently available to the receiving party on a non-confidential basis from a source not known or reasonably suspected by the receiving party to be bound by a confidentiality agreement or secrecy obligation owed to the disclosing party; and (iv) such information is or becomes generally available to the public other than as a result of a breach of this Agreement.

(b) In the event of disclosure pursuant to 12.7(a)(i), Duke Energy Ohio will attempt to notify the SSO Supplier in advance of such disclosure. However, neither Duke Energy Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will not be responsible to the SSO Suppliers for any such disclosure and Duke Energy Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the SSO Suppliers, if Duke Energy Ohio deems such disclosure necessary.

(c) A Party may disclose information and documents provided in connection with this Agreement to its employees, lenders, counsel, accountants, advisors, or utility regulators who have a need to know such information and have agreed to keep such terms confidential.

(d) The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation.

## **12.8 Taxes**

All present and future federal, state, municipal and other taxes imposed by any taxing authority by reason of the provision of SSO Supply by an SSO Supplier under this Agreement (collectively, the "Taxes") will be the liability of the SSO Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the "Ohio Sales and Use Taxes"), which will be Duke Energy Ohio's responsibility. Should an SSO Supplier be required to remit any Ohio Sales and Use Taxes directly to the applicable taxing authority, other than Ohio Sales and Use Taxes previously collected by the SSO Supplier on behalf of Duke Energy Ohio, Duke Energy Ohio will defend and indemnify the SSO Supplier for such Ohio Sales and Use Taxes and will pay to the SSO Supplier all such tax amounts upon demand. Each SSO Supplier shall pay all Taxes (other than Ohio Sales and Use Taxes) to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the affected SSO Supplier will, if requested, provide Duke Energy Ohio with valid tax exemption certificates. Should Duke Energy Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes and other Taxes previously collected by Duke Energy Ohio directly from an SSO

Supplier), the SSO Supplier will defend and indemnify Duke Energy Ohio and will pay Duke Energy Ohio all such Tax amounts upon demand.

Each Party shall provide to the other Party all information, data and exemption certificates as such other Party may from time to time reasonably request and otherwise fully cooperate with such other Party in connection with the reporting of (i) any Taxes payable by an SSO Supplier; (ii) any Tax audit; or (iii) any assessment, refund claim or proceeding relating to Taxes. Each Party shall cooperate with the other Party and take any action reasonably requested, which does not cause the Party to incur any material cost or inconvenience, in order to minimize any Taxes payable.

#### **12.9 Record Retention**

Each Party will retain for a period of two (2) years following the expiration of the Term necessary records so as to permit the Parties to confirm the accuracy of any statement, charge or computation made pursuant to this Agreement; provided that, if a Party provides notice within two (2) years of the expiration of the Term that it disputes the validity of any payments or quantity of Energy delivered, the Parties agree that they will retain all records related to such dispute until the dispute is resolved pursuant to Article 11.

Each SSO Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of such SSO Supplier) the books and records retained by Duke Energy Ohio only insofar as they relate to payments due and owing, or owed and paid, to such SSO Supplier. Such inspection must take place during regular business hours. Duke Energy Ohio will have the right, upon reasonable notice, to inspect (at the sole cost and expense of Duke Energy Ohio) the books and records retained by such SSO Supplier only insofar as they relate to Energy delivered by such SSO Supplier. Such inspection must take place during regular business hours.

#### **12.10 Rules as to Usage**

Except as otherwise expressly provided herein, the following rules shall apply to the usage of terms in this Agreement:

(a) The terms defined above have the meanings set forth above for all purposes, and such meanings are equally applicable to both the singular and plural forms of the terms defined.

(b) "Include," "includes" and "including" shall be deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import.

(c) Any law defined or referred to above means such law as from time to time amended, modified or supplemented, including by succession of comparable successor law.

(d) "Hereof," "herein," "hereunder" and comparable terms refer, unless otherwise expressly indicated, to the entire agreement or instrument in which such terms are used and not to any particular article, section or other subdivision thereof or attachment thereto. References in an instrument to "Article," "Section," or another subdivision or to an attachment are, unless the context otherwise requires, to the relevant article, section, subsection or subdivision of or an attachment to such agreement or instrument. If such reference in this Agreement to "Article," "Section," or other subdivision does not specify an agreement or document, such reference refers to an article, section or other subdivision of this Agreement. All references to exhibits or schedules in any agreement or instrument that is governed by this Agreement are to exhibits or schedules attached to such instrument or agreement.

(e) All titles and headings used herein are for convenience and references purposes only, and shall not be applicable in construing or interpreting obligations under this Agreement.

(f) The word "or" will have the inclusive meaning represented by the phrase "and/or."

(g) "Shall" and "will" have equal force and effect.

#### **12.11 Counterparts**

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

[Signatures appear on next pages]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first set forth above.

DUKE ENERGY OHIO, INC.

By \_\_\_\_\_

Name:

Title:

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[SSO SUPPLIER]

By: \_\_\_\_\_

Name:

Title

**ATTACHMENTS**

- A        SSO Supplier Responsibility Share
- B        Seasonal Billing Factor
- C        Credit Examples
- D        Form of Guaranty
- E        Form of SSO Supplier Letter of Credit
- F        Sample PJM Invoice



ATTACHMENT A

SSO SUPPLIER RESPONSIBILITY SHARE

SSO Supplier	Price (\$MWh)	SSO Supplier Responsibility Share Percentage (%)	No. of Tranches
_____	_____/MWh	_____%	_____

Original Delivery Period: [\_\_\_\_\_] through [\_\_\_\_\_].

Address for Notice:

1. In the case of all notices except those required under Article 5:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Article 5 Notices:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

2. In the case of all notices except those required under Article 5:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Article 5 Notices:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

**3. In the case of all notices except those required under Article 5:**

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Copy to:

Name:  
Address:  
Telephone:  
Facsimile:  
E-mail:

Article 5 Notices:

Name:  
Address:  
Telephone:

Facsimile:  
E-mail:

[SSO SUPPLIER]

By: \_\_\_\_\_  
Name:  
Title:

**ATTACHMENT B**  
**SEASONAL BILLING FACTOR**

The Seasonal Billing Factors are as follows:

June 1 through September 30	[Seasonal Billing Factor]
October 1 through December 31 and January 1 through May 31	[Seasonal Billing Factor]

ATTACHMENT C-1  
INDEPENDENT CREDIT REQUIREMENT PER TRANCHE

Month	17-Month Procurement (\$/Tranche)	29-Month Procurement (\$/Tranche)	41-Month Procurement (\$/Tranche)
Inception through January 2012	\$250,000	\$425,000	\$650,000
February 2012	\$250,000	\$425,000	\$650,000
March 2012	\$250,000	\$425,000	\$650,000
April 2012	\$250,000	\$425,000	\$650,000
May 2012	\$250,000	\$425,000	\$650,000
June 2012	\$175,000	\$325,000	\$575,000
July 2012	\$175,000	\$325,000	\$575,000
August 2012	\$175,000	\$325,000	\$575,000
September 2012	\$100,000	\$250,000	\$500,000
October 2012	\$100,000	\$250,000	\$500,000
November 2012	\$100,000	\$250,000	\$500,000
December 2012	\$100,000	\$250,000	\$500,000
January 2013	\$50,000	\$200,000	\$425,000
February 2013	\$50,000	\$200,000	\$425,000
March 2013	\$50,000	\$200,000	\$425,000
April 2013	\$50,000	\$200,000	\$425,000
May 2013	\$50,000	\$200,000	\$425,000
June 2013		\$150,000	\$325,000
July 2013		\$150,000	\$325,000
August 2013		\$150,000	\$325,000
September 2013		\$100,000	\$250,000

October 2013		\$100,000	\$250,000
November 2013		\$100,000	\$250,000
December 2013		\$100,000	\$250,000
January 2014		\$50,000	\$200,000
February 2014		\$50,000	\$200,000
March 2014		\$50,000	\$200,000
April 2014		\$50,000	\$200,000
May 2014		\$50,000	\$200,000
June 2014			\$150,000
July 2014			\$150,000
August 2014			\$150,000
September 2014			\$100,000
October 2014			\$100,000
November 2014			\$100,000
December 2014			\$100,000
January 2015			\$50,000
February 2015			\$50,000
March 2015			\$50,000
April 2015			\$50,000
May 2015			\$50,000

ATTACHMENT C-2

**EXAMPLE MARK-TO-MARKET EXPOSURE AMOUNT CALCULATION**

The following is an illustration of the methodology Duke Energy Ohio will use to determine the Mark-to-Market Exposure Amounts for each SSO Supplier.

On the closing day of the Solicitation, the following parameters will be determined by Duke Energy Ohio:

1. The expected On-Peak SSO Load per Tranche;
2. The expected Off-Peak SSO Load per Tranche;
3. Prevailing On-Peak Forward Market Prices for each month during the Original Delivery Period;
4. Prevailing Off-Peak Forward Market Prices for each month during the Original Delivery Period;
5. On-Peak Price Adjustment Factors; and
6. Off-Peak Price Adjustment Factors.

For purposes of the Mark-to-Market Exposure Amount calculation, "On-Peak" means the hours between 7:00 a.m. and 11:00 p.m. prevailing Eastern Time on Monday through Friday, excluding NERC holidays. "Off-Peak" means any hours that are not considered On-Peak.

The SSO Load for each month will be calculated by multiplying (i) the number of customers then being provided generation service by Duke Energy Ohio (the "Un-Switched Customers") by (ii) the historical monthly average usage per customer derived from data for all customers served by Duke Energy Ohio on its transmission and distribution system based on a recent three-year period ("Historical Actual Usage"). The SSO Load will be calculated separately for each major rate class and then summed to determine the total SSO Load. The total SSO Load will then be separated into On-Peak and Off-Peak components (consistent with the definitions cited above), still on a monthly basis, based on the Historical Actual Usage for all customer classes combined. The SSO Load per Tranche (On-Peak and Off-Peak) will be equal to 1% of the total SSO Load calculated for each component.

To the extent that quoted Forward Market Prices are not available on a monthly basis, monthly Forward Market Prices will be determined by Duke Energy Ohio with reference to available market price data. Notwithstanding the foregoing, if Duke Energy Ohio is unable to obtain publicly available market price data for Forward Market Prices, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM.

A set of monthly On-Peak Price Adjustment Factors and Off-Peak Price Adjustment Factors will be developed using historical PJM day-ahead hourly prices applied to hourly usage derived from Historical Actual Usage on the Duke Energy Ohio system, which factors will be applied to On-Peak Forward Market Prices and Off-Peak Forward Market Prices respectively to yield Adjusted On-Peak Forward Market Prices and Adjusted Off-Peak Forward Market Prices. These Adjusted Forward Market Prices will be used for the purpose of computing the Mark-to-Market Exposure Amounts. The purpose of the Price Adjustment Factors is to restate the quoted Forward Market Prices, which are based on fixed block volumes of MWhs, to more closely approximate the price impact of serving a requirements load which reflects hourly variations due to customer usage patterns. The Price Adjustment Factors are anticipated to be recalculated as of each future auction date and applied to all then existing SSO Agreements.

The Adjusted Forward Market Prices prevailing on the closing day of the Solicitation are used to establish a "market value" for each month during the Original Delivery Period. Table 1 contains hypothetical initial Adjusted On-Peak and Off-Peak Forward Market Prices for a 17-month Original Delivery Period from January 2012 through May 2013. Table 1 shows the hypothetical "market value" of a Tranche, which will be established on the day the Solicitation is completed using the Adjusted Forward Market Prices determined as shown in Table 2.

For each calculation of the Mark-to-Market Exposure Amount, Duke Energy Ohio will determine the Adjusted Forward Market Prices for each month during the Original Delivery Period. Table 3 shows the calculation of an updated "market value" using hypothetical Adjusted Forward Market Prices for each month during the Original Delivery Period assumed to be in effect immediately prior to the Delivery Period for the 17-month Original Delivery Period. The initial market value as of the Solicitation completion date is then subtracted from the updated market value to derive a change in market value. The Mark-to-Market Exposure Amount is then



calculated on an un-discounted basis by multiplying this change in market value by a Volume Adjustment Factor. The final Mark-to-Market Exposure Amount is determined by stating the values on a present value basis as of the determination date by discounting the calculated values at the then prevailing LIBOR rate (not shown).

The Volume Adjustment Factor will be determined by recalculating the SSO Load per Tranche reflecting the then current number of Un-Switched Customers and Historical Actual Usage and calculating the ratio of the current SSO Load per Tranche to the initial SSO Load per Tranche. The value for Un-Switched Customers is anticipated to be updated on a monthly basis and the value of Historical Actual Usage is anticipated to be updated once each calendar year.

TABLE 1

Market Valuation on Solicitation Closing Date:

[VALUES ARE FOR ILLUSTRATION ONLY]

		<u>Forward Market (a)</u>		<u>Initial Tranche Volume (b)</u>		
		<u>Adjusted</u> <u>On-Peak</u> <u>Market</u> <u>Price</u> <u>\$/MWh</u>	<u>Adjusted</u> <u>Off-Peak</u> <u>Market</u> <u>Price</u> <u>\$/MWh</u>	<u>On-Peak</u> <u>MWh</u>	<u>Off-Peak</u> <u>MWh</u>	<u>Mkt Value</u> <u>\$000</u>
Jan-12	\$	46.70	\$ 37.99	7,052	7,138	\$ 600
Feb-12	\$	47.06	\$ 37.84	6,392	6,680	\$ 554
Mar-12	\$	44.41	\$ 35.56	6,064	5,849	\$ 477
Apr-12	\$	44.15	\$ 35.39	5,345	4,953	\$ 411
May-12	\$	43.36	\$ 32.47	4,901	4,766	\$ 367
Jun-12	\$	46.65	\$ 34.06	6,568	5,618	\$ 498
Jul-12	\$	57.48	\$ 41.11	7,120	6,626	\$ 682
Aug-12	\$	57.32	\$ 40.25	7,454	6,452	\$ 687
Sep-12	\$	46.01	\$ 33.25	6,919	6,702	\$ 541
Oct-12	\$	44.59	\$ 35.02	5,565	5,261	\$ 432
Nov-12	\$	44.68	\$ 34.36	4,815	5,364	\$ 399
Dec-12	\$	44.95	\$ 34.39	6,270	6,449	\$ 504
Jan-13	\$	50.41	\$ 41.01	7,052	7,138	\$ 648
Feb-13	\$	50.80	\$ 40.85	6,392	6,680	\$ 598
Mar-13	\$	47.94	\$ 38.39	6,064	5,849	\$ 515
Apr-13	\$	47.66	\$ 38.20	5,345	4,953	\$ 444
May-13	\$	46.80	\$ 35.05	4,901	4,766	\$ 396

(a): Adjusted On-Peak and Off-Peak Forward Market Prices determined as shown on Table 2.

(b): Expected On-Peak and Off-Peak SSO Load per Tranche derived from Historical Actual Usage and number of Un-Switched Customers as described in Attachment C-2.

TABLE 2  
Adjusted Market Prices at Solicitation Closing Date  
[VALUES ARE FOR ILLUSTRATION ONLY]

	<u>Forward Price (a)</u>							
	On-Peak	Off-Peak			Adjusted	Adjusted		
	Market Price	Market Price	<u>Price Adjustment Factor (b)</u>		On-Peak	Off-Peak		
	\$/MWh	\$/MWh	On-Peak	Off-Peak	\$/MWh	\$/MWh		
Jan-12	\$ 45.78	\$ 36.70	1.020	1.035	\$ 46.70	\$ 37.99		
Feb-12	\$ 45.78	\$ 36.70	1.028	1.031	\$ 47.06	\$ 37.84		
Mar-12	\$ 43.42	\$ 34.23	1.023	1.039	\$ 44.41	\$ 35.56		
Apr-12	\$ 43.42	\$ 34.23	1.017	1.034	\$ 44.15	\$ 35.39		
May-12	\$ 42.43	\$ 31.26	1.022	1.039	\$ 43.36	\$ 32.47		
Jun-12	\$ 44.90	\$ 31.89	1.039	1.068	\$ 46.65	\$ 34.06		
Jul-12	\$ 54.64	\$ 37.34	1.052	1.101	\$ 57.48	\$ 41.11		
Aug-12	\$ 54.64	\$ 37.34	1.049	1.078	\$ 57.32	\$ 40.25		
Sep-12	\$ 44.63	\$ 31.64	1.031	1.051	\$ 46.01	\$ 33.25		
Oct-12	\$ 44.02	\$ 33.32	1.013	1.051	\$ 44.59	\$ 35.02		
Nov-12	\$ 44.02	\$ 33.32	1.015	1.031	\$ 44.68	\$ 34.36		
Dec-12	\$ 44.02	\$ 33.32	1.021	1.032	\$ 44.95	\$ 34.39		
Jan-13	\$ 49.42	\$ 39.62	1.020	1.035	\$ 50.41	\$ 41.01		
Feb-13	\$ 49.42	\$ 39.62	1.028	1.031	\$ 50.80	\$ 40.85		
Mar-13	\$ 46.86	\$ 36.95	1.023	1.039	\$ 47.94	\$ 38.39		
Apr-13	\$ 46.86	\$ 36.95	1.017	1.034	\$ 47.66	\$ 38.20		
May-13	\$ 45.80	\$ 33.74	1.022	1.039	\$ 46.80	\$ 35.05		

(a): On-Peak and Off-Peak Forward Market Prices as determined by reference to available market price data at time of Solicitation Closing Date.

(b): Price Adjustment Factors determined by Duke Energy Ohio as described in Attachment C-2.

TABLE 3

Market Valuation Immediately Prior to Start of Delivery Period

[VALUES ARE FOR ILLUSTRATION ONLY]

Forward Market (a)		Initial Tranche Volume (b)				Original Mkt	Change in		Volume	Volume
Adjusted	Adjusted			Current Mkt	Solidtation	Value on	Mkt Value	Adjustment	Adjusted	Change In
On-Peak	Off-Peak	On-Peak	Off-Peak	Value \$000	Closing Date	Value on				
Market	Market	MWh	MWh			\$000	\$000		Factor	Mkt Value
Price	Price									\$000
\$/MWh	\$/MWh									
Jan-12	\$ 50.36	\$ 40.37	7,052	7,138	\$ 643	\$ 600	\$ 43	0.999	\$ 43	
Feb-12	\$ 50.36	\$ 40.37	6,392	6,680	\$ 592	\$ 554	\$ 38	0.998	\$ 38	
Mar-12	\$ 47.76	\$ 37.65	6,064	5,849	\$ 510	\$ 477	\$ 32	0.997	\$ 32	
Apr-12	\$ 47.76	\$ 37.65	5,345	4,953	\$ 442	\$ 411	\$ 30	0.996	\$ 30	
May-12	\$ 46.67	\$ 34.38	4,901	4,766	\$ 393	\$ 367	\$ 25	0.996	\$ 25	
Jun-12	\$ 49.39	\$ 35.08	6,568	5,618	\$ 522	\$ 498	\$ 24	0.997	\$ 24	
Jul-12	\$ 60.11	\$ 41.08	7,120	6,626	\$ 700	\$ 682	\$ 18	0.998	\$ 18	
Aug-12	\$ 60.11	\$ 41.08	7,454	6,452	\$ 713	\$ 687	\$ 26	0.998	\$ 26	
Sep-12	\$ 49.09	\$ 34.80	6,919	6,702	\$ 573	\$ 541	\$ 32	0.998	\$ 32	
Oct-12	\$ 48.42	\$ 36.66	5,565	5,261	\$ 462	\$ 432	\$ 30	0.996	\$ 30	
Nov-12	\$ 48.42	\$ 36.66	4,815	5,364	\$ 430	\$ 399	\$ 30	0.996	\$ 30	
Dec-12	\$ 48.42	\$ 36.66	6,270	6,449	\$ 540	\$ 504	\$ 36	0.998	\$ 36	
Jan-13	\$ 54.36	\$ 43.58	7,052	7,138	\$ 694	\$ 648	\$ 46	0.999	\$ 46	
Feb-13	\$ 54.36	\$ 43.58	6,392	6,680	\$ 639	\$ 598	\$ 41	0.998	\$ 41	
Mar-13	\$ 51.55	\$ 40.64	6,064	5,849	\$ 550	\$ 515	\$ 35	0.997	\$ 35	
Apr-13	\$ 51.55	\$ 40.64	5,345	4,953	\$ 477	\$ 444	\$ 33	0.996	\$ 33	
May-13	\$ 50.38	\$ 37.11	4,901	4,766	\$ 424	\$ 396	\$ 27	0.996	\$ 27	
Total Mark-to-Market Exposure per Tranche (before discounting) (c)										\$ 546

(a): Adjusted On-Peak and Off-Peak Forward Market Prices determined as described in Attachment C-2 as of the date immediately prior to start of Delivery Period.

(b): Expected On-Peak and Off-Peak SSO Load per Tranche determined as of Solicitation Closing Date - see Table 1.

(c): Actual values will be determined by calculating the present value of the Volume Adjusted Change in Market Value.

ATTACHMENT D  
FORM OF GUARANTY

This Guaranty, dated as of \_\_\_\_\_, 201\_, is made by \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the "Guarantor"), for the benefit of Duke Energy Ohio, Inc., an Ohio corporation ("Duke Energy Ohio"). Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (as defined below).

WHEREAS, Duke Energy Ohio has entered into or will be entering into that certain Master Standard Service Offer Supply Agreement dated \_\_\_\_\_, 201\_ (the "Agreement") with \_\_\_\_\_, a \_\_\_\_\_ [corporation] (the "SSO Supplier"), which may involve the extension of credit by Duke Energy Ohio. Guarantor hereby acknowledges that it will receive a direct or indirect benefit from the business transactions between the SSO Supplier and Duke Energy Ohio and the making of this Guaranty.

NOW, THEREFORE, in consideration of, and as an inducement for, Duke Energy Ohio entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally and absolutely guarantees to Duke Energy Ohio the prompt payment when due, subject to any applicable grace period and upon demand in writing from Duke Energy Ohio, of any and all amounts payable by the SSO Supplier to Duke Energy Ohio arising out of the Agreement (the "Obligations"). Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by the SSO Supplier to Duke Energy Ohio, the liability of the Guarantor to Duke Energy Ohio shall not exceed \_\_\_\_\_ U.S. Dollars (\$ \_\_\_\_\_).

2. **Nature of Guaranty.** The Guarantor hereby agrees that its obligations hereunder shall be unconditional irrespective of the impossibility or illegality of performance by the SSO Supplier under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by Duke Energy Ohio concerning any provisions of the Agreement; the rendering of any judgment against the SSO Supplier or any action to enforce the same; any failure by Duke Energy Ohio to take any steps necessary to preserve its rights to any security or collateral for the Obligations; the release of all or any portion of any collateral by Duke Energy Ohio; or any failure by Duke Energy Ohio to perfect or to keep perfected its security interest or lien in any portion of any collateral.

This Guaranty is one of payment and not of collection. This Guaranty shall remain in full force and effect or shall be reinstated (as the case may be) if at any time any payment guaranteed hereunder, in whole or in part, is rescinded or must otherwise be returned by Duke Energy Ohio

upon the insolvency, bankruptcy or reorganization of the SSO Supplier or otherwise, all as though such payment had not been made.

3. **Waivers.** The Guarantor hereby expressly waives notice of acceptance of this Guaranty; notice of any Obligation to which this Guaranty may apply or of any security therefor; diligence; presentment; protest; notice of protest, acceleration, and dishonor; filing of claims with a court in the event of insolvency or bankruptcy of the SSO Supplier; all demands whatsoever, except as noted in Section 1 hereof; and any right to require a proceeding first against the SSO Supplier.

4. **Effect of Amendments.** Guarantor agrees that Duke Energy Ohio and SSO Supplier may modify or amend any or all of the Agreement and that Duke Energy Ohio may, according to the Agreement, delay or extend the date on which any performance must be made under the Agreement, or release SSO Supplier from the obligation to so perform or waive any right thereunder, all without notice to or further assent by Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by Duke Energy Ohio.

5. **Termination.** This Guaranty is intended to be and shall be construed to be a continuing, absolute and unconditional guaranty, and shall remain in full force and effect until all Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to Duke Energy Ohio, which termination shall be effective only upon receipt by Duke Energy Ohio of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to Duke Energy Ohio. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Obligations existing prior to the time the expiration or termination is effective, which Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.

6. **Notices.** All notices and other communications about this Guaranty must be in writing, must be given by facsimile, hand delivery or overnight courier service and must be addressed or directed to the respective parties as follows:

If to Duke Energy Ohio, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Attn.: \_\_\_\_\_

If to the Guarantor, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Facsimile No.: \_\_\_\_\_

Attn.: \_\_\_\_\_

Notices are effective when actually received by the party to which they are given, as evidenced by facsimile transmission report, written acknowledgment or affidavit of hand delivery or courier receipt.

7. **Representations and Warranties.** The Guarantor represents and warrants to Duke Energy Ohio as of the date hereof that:

- a) The Guarantor is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and has full power and legal right to execute and deliver this Guaranty and to perform the provisions of this Guaranty on its part to be performed;
- b) The execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate action and do not contravene any provision of its certificate of incorporation or by-laws or any law, regulation or contractual restriction binding on it or its assets;
- c) All consents, authorizations, approvals, registrations and declarations required for the due execution, delivery and performance of this Guaranty have been obtained from or, as the case may be, filed with the relevant governmental authorities having jurisdiction and remain in full force and effect, and all conditions thereof have been duly complied with and no other action by, and no notice to or filing with, any governmental authority having jurisdiction is required for such execution, delivery or performance; and
- d) This Guaranty constitutes the legal, valid and binding obligation of the Guarantor enforceable against it in accordance with its terms, except as enforcement hereof may be limited by applicable bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights or by general equity principles

8. **Certification.** The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.

9. **Setoffs and Counterclaims.** Without limiting the Guarantor's own defenses and rights hereunder, the Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which the SSO Supplier is or may be entitled arising from or out of the Agreement, except for defenses arising out of bankruptcy, insolvency, dissolution or liquidation of the SSO Supplier.

10. **Subrogation.** The Guarantor will not exercise any rights that it may acquire by way of subrogation until all Obligations shall have been paid in full. Subject to the foregoing, upon payment of all such Obligations, the Guarantor shall be subrogated to the rights of Duke Energy Ohio against the SSO Supplier, and Duke Energy Ohio agrees to take at the Guarantor's expense such steps as the Guarantor may reasonably request to implement such subrogation.

11. **Expenses.** The Guarantor hereby agrees to pay on demand all reasonable out-of-pocket expenses (including the reasonable fees and expenses of Duke Energy Ohio's counsel) in any way relating to the enforcement or protection of the rights of Duke Energy Ohio hereunder; provided that the Guarantor shall not be liable for any expenses of Duke Energy Ohio if no payment under this Guaranty is due.

12. **Assignment.** This Guaranty shall be binding upon the Guarantor and upon its permitted successors and assigns, and shall inure to the benefit of Duke Energy Ohio and its permitted successors and assigns and shall apply to all successors and assigns of the SSO Supplier. The Guarantor may not assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of Duke Energy Ohio. Duke Energy Ohio may assign this Guaranty in accordance with the terms of the Agreement.

13. **Amendments.** No term or provision of this Guaranty shall be amended, modified, altered, waived, or supplemented except in a writing signed by the parties hereto.

14. **Choice of Law and Venue.** THE GUARANTOR AND DUKE ENERGY OHIO HEREBY AGREE THAT THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF OHIO WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW.

15. **Waiver of Jury Trial.** The Guarantor and Duke Energy Ohio, through acceptance of this Guaranty, waive all rights to trial by jury in any action, proceeding or counterclaim arising or relating to this Guaranty.

16. **Miscellaneous.** This Guaranty is the entire and only agreement between the Guarantor and Duke Energy Ohio with respect to the guarantee of amounts payable by the SSO Supplier to Duke Energy Ohio arising out of the Agreement. All representations, warranties,



agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed in its [corporate] name by its duly authorized representative as of the date first above written.

[GUARANTOR]

By: \_\_\_\_\_

Its: \_\_\_\_\_

ATTACHMENT E  
FORM OF SSO SUPPLIER Letter of Credit

\_\_\_\_\_ (Date)

Letter of Credit No. \_\_\_\_\_

To: Duke Energy Ohio, Inc. ("Beneficiary")  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ (the "Applicant"), in the aggregate amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ (location) and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof. This Letter of Credit may be drawn:
  - (a) upon an Event of Default with respect to the Applicant under the Master Standard Service Offer Supply Agreement; or
  - (b) in the event the Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply Agreement.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (prevailing Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (i) a notice in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.
3. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.
5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such banks in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. prevailing Eastern Time on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (prevailing Eastern time) on a business day pursuant to Paragraph 3 hereof, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made after 11:00 A.M. (prevailing Eastern time) on any Business Day pursuant to Paragraph 3 hereof.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum

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<sup>1</sup> If the issuer of the Letter of Credit is located in an area that is not in the Eastern time zone, this time and all other times in this Letter of Credit, and the definition of a business day should be adjusted accordingly.

8. amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 hereof; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to the Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this Letter of Credit for such additional one (1) year period.

8. As used herein:

"Authorized Officer" shall mean President, Treasurer, any Vice President, any Assistant Treasurer or any other person holding an equivalent title.

"Availability Certificate" shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by an Authorized Officer of the Beneficiary.

"Business Day" shall mean any day on which commercial banks are not authorized or required to close in New York, NY and any day on which payments can be effected on the Fed wire system.

"Master Standard Service Offer Supply Agreement" shall mean that certain Master Standard Service Offer Supply Agreement between the Applicant and the Beneficiary, dated \_\_\_\_\_.

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all banking charges, transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.
12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.
13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
15. This original Letter of Credit has been sent to the Beneficiary located at \_\_\_\_\_ (as per Applicant’s instructions). Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or

rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the Beneficiary.

Very truly yours,

(Bank)

\_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

By: \_\_\_\_\_

Name:

Title:

Annex 1 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.

2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$ \_\_\_\_\_, inasmuch as (choose one of the following by placing an "X" on the line preceding the statement):

\_\_\_\_\_ (a) An Event of Default has occurred with respect to the Applicant under the Master Standard Service Offer Supply Agreement;

\_\_\_\_\_ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply Agreement.

3. The amount to be received by Duke Energy Ohio, Inc. is \$\_\_\_\_\_.

4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:



Annex 2 to Letter of Credit

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

ON [Business Day set forth in Paragraph 5]

PAY TO: Duke Energy Ohio, Inc.

\$ \_\_\_\_\_

For credit to the account of \_\_\_\_\_.

FOR VALUE RECEIVED AND CHARGE TO ACCOUNT OF LETTER OF CREDIT  
NO. \_\_\_\_\_ OF

(Bank)

(Address)

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:

Annex 3 to Letter of Credit

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_ (date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Beneficiary's Address]

Very truly yours,

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:

Agreed and Accepted

(Bank)

By: \_\_\_\_\_

Title:

Date:

APPLICANT NAME

By: \_\_\_\_\_

Name:

Title:

Date:

Annex 4 to Letter of Credit

CERTIFICATE OF EXPIRATION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned hereby certifies to you that the above-referenced Letter of Credit may be cancelled without payment. Attached hereto is said Letter of Credit, marked cancelled.

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

Annex 5 to Letter of Credit

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To: Duke Energy Ohio, Inc.  
550 South Tryon Street (DEC40C)  
Charlotte, NC 28202  
Attention: Chief Risk Officer

Re: Our Letter of Credit No. \_\_\_\_\_ presently in the aggregate  
amount of USD \_\_\_\_\_ issued for the account of  
\_\_\_\_\_ and expiring on \_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new  
Letter of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new  
Letter of Credit No. \_\_\_\_\_ will, aside from the expiration date, be in the  
amount and form of our Letter of Credit No. \_\_\_\_\_.

Very truly yours,

BANK \_\_\_\_\_

By: \_\_\_\_\_

Name:

Title:

Date:

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

**Annex 6 to Letter of Credit**

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

\_\_\_\_\_, 20\_\_

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For the value received, the undersigned Beneficiary hereby irrevocably transfers to:

\_\_\_\_\_

(Name of Transferee)

\_\_\_\_\_

(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very Truly Yours,

Duke Energy Ohio, Inc.

By: \_\_\_\_\_

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

\_\_\_\_\_  
(Authorized signature of authenticating party)

Name

Title



ATTACHMENT F  
SAMPLE PJM INVOICE

PJM Billing Statement Line Items		
ID #	Resp.	CHARGES
1000	SSO S	Amount Due for Interest on Past Due Charges
1100	EDC	Network Integration Transmission Service
1104	EDC	Network Integration Transmission Service Offset
1108	EDC	Transmission Enhancement
1110	SSO S	Direct Assignment Facilities
1120	SSO S	Other Supporting Facilities
1130	SSO S	Firm Point-to-Point Transmission Service
1133	SSO S	Firm Point-to-Point Transmission Service Resale
1135	SSO S	Neptune Voluntary Released Transmission Service (Firm)
1138	SSO S	Linden Voluntary Released Transmission Service (Firm)
1140	SSO S	Non-Firm Point-to-Point Transmission Service
1143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
1145	SSO S	Neptune Voluntary Released Transmission Service (Non-Firm)
1146	SSO S	Neptune Default Released Transmission Service (Non-Firm)
1147	SSO S	Neptune Unscheduled Usage Billing Allocation
1155	SSO S	Linden Voluntary Released Transmission Service (Non-Firm)
1156	SSO S	Linden Default Released Transmission Service (Non-Firm)
1157	SSO S	Linden Unscheduled Usage Billing Allocation
1200	SSO S	Day-ahead Spot Market Energy
1205	SSO S	Balancing Spot Market Energy
1210	SSO S	Day-ahead Transmission Congestion
1215	SSO S	Balancing Transmission Congestion
1218	SSO S	Planning Period Congestion Uplift
1220	SSO S	Day-ahead Transmission Losses
1225	SSO S	Balancing Transmission Losses
1230	SSO S	Inadvertent Interchange
1240	SSO S	Day-ahead Economic Load Response
1241	SSO S	Real-time Economic Load Response

1245	SSO S	Emergency Load Response
1250	SSO S	Meter Error Correction
1260	SSO S	Emergency Energy
1301	EDC	<b>PJM Scheduling, System Control and Dispatch Service - Control Area Administration</b>
1302	EDC	<b>PJM Scheduling, System Control and Dispatch Service - FTR Administration</b>
1303	EDC	<b>PJM Scheduling, System Control and Dispatch Service - Market Support</b>
1304	EDC	<b>PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration</b>
1305	EDC	<b>PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.</b>
1306	EDC	<b>PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center</b>
1308	EDC	<b>PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration</b>
1309	EDC	<b>PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration</b>
1310	EDC	<b>PJM Scheduling, System Control and Dispatch Service Refund - Market Support</b>
1311	EDC	<b>PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration</b>
1312	EDC	<b>PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.</b>
1314	SSO S	Market Monitoring Unit (MMU) Funding
1315	SSO S	FERC Annual Charge Recovery
1316	SSO S	Organization of PJM States, Inc. (OPSI) Funding
1317	SSO S	North American Electric Reliability Corporation (NERC)
1318	SSO S	Reliability First Corporation (RFC)
1320	EDC	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
1330	EDC	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	SSO S	Regulation and Frequency Response Service
1350	SSO S	Energy Imbalance Service
1360	SSO S	Synchronized Reserve
1365	SSO S	Day-ahead Scheduling Reserve
1370	SSO S	Day-ahead Operating Reserve
1371	SSO S	Day-ahead Operating Reserve for Load Response
1375	SSO S	Balancing Operating Reserve
1376	SSO S	Balancing Operating Reserve for Load Response
1377	SSO S	Synchronous Condensing
1378	SSO S	Reactive Services
1380	SSO S	Black Start Service
1400	SSO S	Load Reconciliation for Spot Market Energy
1410	SSO S	Load Reconciliation for Transmission Congestion
1420	SSO S	Load Reconciliation for Transmission Losses
1430	SSO S	Load Reconciliation for Inadvertent Interchange
1440	EDC	<b>Load Reconciliation for PJM Scheduling, System Control and Dispatch Service</b>
1441	EDC	<b>Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund</b>
1442	SSO S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	SSO S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	SSO S	Load Reconciliation for FERC Annual Charge Recovery
1446	SSO S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	SSO S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	SSO S	Load Reconciliation for Reliability First Corporation (RFC)
1450	EDC	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service
1460	SSO S	Load Reconciliation for Regulation and Frequency Response Service
1470	SSO S	Load Reconciliation for Synchronized Reserve
1475	SSO S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	SSO S	Load Reconciliation for Balancing Operating Reserve
1480	SSO S	Load Reconciliation for Synchronous Condensing
1490	SSO S	Load Reconciliation for Reactive Services
1500	SSO S	Financial Transmission Rights Auction
1600	EDC	RPM Auction
1610	EDC	Locational Reliability
1650	EDC	Auction Specific MW Capacity Transaction
1660	EDC	Demand Resource and ILR Compliance Penalty
1661	EDC	Capacity Resource Deficiency
1662	EDC	Generation Resource Rating Test Failure
1663	EDC	Qualifying Transmission Upgrade Compliance Penalty
1664	EDC	Peak Season Maintenance Compliance Penalty
1665	EDC	Peak-Hour Period Availability
1710	SSO S	PJM/MISO Seams Elimination Cost Assignment
1720	SSO S	RTO Start-up Cost Recovery
1730	SSO S	Expansion Cost Recovery
1900	SSO S	Unscheduled Transmission Service
1910	SSO S	Ramapo Phase Angle Regulators
1920	SSO S	Station Power
1930	EDC	Generation Deactivation
1950	SSO S	Virginia Retail Administrative Fee
1955	SSO S	Deferral Recovery
1980	SSO S	Miscellaneous Bilateral
1995	SSO S	PJM Annual Membership Fee
1999	SSO S	PJM Customer Payment Default
TBD	EDC	Midwest ISO Transmission Expansion Plan Assessment

<b>PJM Credits</b>		
<b>ID#</b>	<b>Resp.</b>	<b>CREDITS</b>
2100	EDC	Network Integration Transmission Service
2104	EDC	Network Integration Transmission Service Offset
2106	SSO S	Non-Zone Network Integration Transmission Service
2108	EDC	Transmission Enhancement
2110	SSO S	Direct Assignment Facilities
2120	SSO S	Other Supporting Facilities
2130	SSO S	Firm Point-to-Point Transmission Service
2132	SSO S	Internal Firm Point-to-Point Transmission Service
2133	SSO S	Firm Point-to-Point Transmission Service Resale
2135	SSO S	Neptune Voluntary Released Transmission Service (Firm)
2138	SSO S	Linden Voluntary Released Transmission Service (Firm)
2140	SSO S	Non-Firm Point-to-Point Transmission Service
2142	SSO S	Internal Non-Firm Point-to-Point Transmission Service
2143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
2145	SSO S	Neptune Voluntary Released Transmission Service (Non-Firm)
2146	SSO S	Neptune Default Released Transmission Service (Non-Firm)
2155	SSO S	Linden Voluntary Released Transmission Service (Non-Firm)
2156	SSO S	Linden Default Released Transmission Service (Non-Firm)
2210	SSO S	Transmission Congestion
2217	SSO S	Planning Period Excess Congestion
2218	SSO S	Planning Period Congestion Uplift
2220	SSO S	Transmission Losses
2240	SSO S	Day-ahead Economic Load Response
2241	SSO S	Real-time Economic Load Response
2245	SSO S	Emergency Load Response
2260	SSO S	Emergency Energy
2320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service
2330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service
2340	SSO S	Regulation and Frequency Response Service
2350	SSO S	Energy Imbalance Service
2360	SSO S	Synchronized Reserve
2365	SSO S	Day-ahead Scheduling Reserve
2370	SSO S	Day-ahead Operating Reserve
2371	SSO S	Day-ahead Operating Reserve for Load Response
2375	SSO S	Balancing Operating Reserve
2376	SSO S	Balancing Operating Reserve for Load Response
2377	SSO S	Synchronous Condensing
2378	SSO S	Reactive Services
2380	SSO S	Black Start Service

2420	SSO S	Load Reconciliation for Transmission Losses
2500	SSO S	Financial Transmission Rights Auction
2510	EDC	Auction Revenue Rights
2600	EDC	RPM Auction
2620	EDC	Interruptible Load for Reliability
2630	EDC	Capacity Transfer Rights
2640	EDC	Incremental Capacity Transfer Rights
2650	EDC	Non-Unit Specific Capacity Transaction
2660	EDC	Demand Resource and ILR Compliance Penalty
2661	EDC	Capacity Resource Deficiency
2662	EDC	Generation Resource Rating Test Failure
2663	EDC	Qualifying Transmission Upgrade Compliance Penalty
2664	EDC	Peak Season Maintenance Compliance Penalty
2665	EDC	Peak-Hour Period Availability
2710	SSO S	PJM/MISO Seams Elimination Cost Assignment
2720	SSO S	RTO Start-up Cost Recovery
2730	SSO S	Expansion Cost Recovery
2910	SSO S	Ramapo Phase Angle Regulators
2930	EDC	Generation Deactivation
2950	SSO S	Virginia Retail Administrative Fee
2955	SSO S	Deferral Recovery
2980	SSO S	Miscellaneous Bilateral
2996	SSO S	Annual PJM Cell Tower
2997	SSO S	Annual PJM Building Rent
TBD	EDC	Midwest ISO Transmission Expansion Plan Assessment

**Attachment G**  
**Glossary for**  
**Duke Energy Ohio, Inc.'s**  
**Competitive Bidding Process Auctions**

This Glossary applies to the competitive bidding process ("CBP") auctions for Duke Energy Ohio, Inc. ("Duke Energy Ohio") to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for customers that take retail generation service from Duke Energy Ohio. Some terms contained in this Glossary may also be defined in the Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"). When there is a conflict between this Glossary and the Master SSO Supply Agreement, the Master SSO Supply Agreement will take precedence.

**Advisor** means a person or persons who will be advising or assisting the Qualified Bidder with respect to bidding strategy, estimation of the value of any Tranche, or estimation of the risks associated with any Tranche.

**Affiliate** means, with respect to any Person, any Person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interest having ordinary voting power.

**Alternate Guaranty Form** has the meaning set forth in Part 1 Application.

**Ancillary Services** has the meaning set forth in the PJM Agreements.

**Announced Price** means the price of a Product in effect during a bidding round of the auction.

**Applicant** means a Party that has submitted or indicated that it is going to submit a Part 1 Application.

**Applicant's Legal Representative in Ohio** means legal counsel or a representative agent who has an address in Ohio and is authorized and agrees to accept service of process on the Applicant's behalf.

**Associated and Association** means a Qualified Bidder is associated with another Qualified Bidder if the two Bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. If two Qualified Bidders are Associated, then there is an Association between them.

**Auction Manager** means CRA International, Inc. d/b/a Charles River Associates ("CRA") team working on this CBP.

**Auction Software** means the suite of tools available on the Bidding Website during a live auction.

**Authorized Delegate (Delegate)** means the Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

**Authorized Representative** means a designated person who is authorized to represent the Applicant in the CBP. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the CBP and is responsible for ensuring that no Confidential Information is disclosed improperly.

**Backup Bidding Fax Number** means any telephone number provided to Registered Bidders for use in submitting a bid by fax in the event of a complication with access to the Bidding Website.

**Bidders** means any parties that may become Qualified Bidders in the CBP or that submit bids in the CBP.

**Bidding Agreement** means an arrangement involving joint or coordinated bidding with any other Party.

**Bidding Consortium** means a group of separate businesses or business people joining together to submit joint bids in the auction.

**Bidding Website** means the secure Website used by Registered Bidders to participate in the CBP auction. The URL address for the Bidding Website will be provided to Registered Bidders.

**Business Day** means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM Website. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. prevailing Eastern Time, unless otherwise agreed to by the parties in writing.

**Capacity** means "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of an LSE as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

**CBP** means Competitive Bidding Process.

**Charge** means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of the Company, or any other amount that is billable by the Company to the SSO Supplier under the Master SSO Supply Agreement.

**Commission ("PUCO")** means the Public Utilities Commission of Ohio.

**Company** means Duke Energy Ohio.

**Competitive Retail Electric Service Supplier (CRES Supplier)** means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide



Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of the Company.

**Confidential Information** means two types of information. Confidential information relative to bidding strategy means information relating to a Bidder's bid, written or oral, which if it were to be made public or known to another Bidder would be likely to have an effect on any of the bids that another Bidder would be willing to submit in the CBP. Confidential information regarding the CBP means information, written or oral, that is not released publicly by the PUCO or the Auction Manager and that a Bidder acquires as a result of participating in the CBP, which if it were to be made public could impair the integrity of the current or future CBPs, impair the ability of the Company to hold future CBPs, harm consumers, or injure Bidders or Applicants.

**Confirmed Bid** means a bid submitted by a Bidder that is confirmed by the Bidding Website. A bid submitted by a Bidder is confirmed only if the Bidder receives a unique confirmation ID and time-stamp by the Bidding Website server. If the Bidder submits a bid but fails to complete the last step to confirm the bid, that bid will not be considered a Confirmed Bid.

**Contingency Plan** means in the event that fewer Tranches than a Product's Tranche Target are purchased in the auction, the Company will implement a Contingency Plan for the unfilled Tranches.

**Costs** mean, with respect to the Non-Defaulting Party, all reasonable attorney's fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements that replace the Master SSO Supply Agreement; and all reasonable attorney's fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between the Company and the applicable SSO Supplier.

**Credit-Based Tranche Cap** means the maximum possible Initial Eligibility for a Qualified Bidder based on its credit rating.

**Credit Documents** means Letter of Credit, Letter of Intent to Provide a Guaranty, Letter of Reference, or any other credit support document.

**Credit Limit** means the amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6 of the Master SSO Supply Agreement, granted by the Company to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO Supplier.

**Credit Representative** means the Applicant's designated in-house Credit Representative who can answer questions or provide information about the Applicant's credit with respect to the requirements for the CBP.

**Customer** means any Person who receives distribution service from the Company in accordance with the Legal Authorities.

**Day(s)** means to Business Day(s), unless noted otherwise.

**Defaulting Party** has the meaning set forth in Section 7.1 of the Master SSO Supply Agreement.

**Delegate (Authorized Delegate)** means a Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

**Delivery Period** means the Original Delivery Period, unless the Master SSO Supply Agreement is terminated earlier in accordance with its provisions.

**Effective Date** has the meaning set forth in the preamble of the Master SSO Supply Agreement.

**Eligibility** means the maximum number of Tranches a Bidder can bid across all Products in a bidding round. From round to round, a Bidder's Eligibility cannot increase; it can only stay the same or decrease.

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

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

**Full Requirements Service** includes Energy, Capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio.

**Goodwill** means an intangible asset that is the amount by which the purchase price of an acquired entity exceeds its net tangible asset value.

**Governmental Authority** means any federal state, local, municipal or other governmental entity, authority or agency, department, board, court, tribunal, regulatory commission, or other body, whether legislative, judicial or executive, together or individually, exercising or entitled to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power or a Party to the CPB or Master SSO Supply Agreement.

**Guarantor** means any Person having the authority and agreeing to guarantee an SSO Supplier's financial obligations under the Master SSO Supply Agreement, provided that such party meets the Company's creditworthiness requirements for SSO Suppliers.

**Guaranty** means the ICT Guaranty or the Total Exposure Amount Guaranty, as applicable.

**Help Desk** means the resource available to provide technical assistance during a live auction.

**ICR Collateral** has the meaning set forth in Section 5.4(d) of the Master SSO Supply Agreement.

**ICRT** has the meaning set forth in Section 5.3 of the Master SSO Supply Agreement.

**ICT Guaranty** means a guaranty, in the form substantially set forth in Attachment D of the Master SSO Supply Agreement, provided by a Guarantor in favor of the Company guaranteeing an SSO Supplier's financial obligations in connection with ICT.

**Independent Credit Requirement ("ICR")** means an amount per Tranche required as security under Section 5.3 of the Master SSO Supply Agreement, to mitigate the financial risk to the Company of Energy price movements between the date of an Early Termination caused by an Event of Default by an SSO Supplier and the date the final calculation of Default Damages owing to the Company under Section 7.2(c) of the Master SSO Supply Agreement is made.

**Independent Credit Threshold or ICT** means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.4 of the Master SSO Agreement, granted by the Company to such SSO Supplier to be applied towards the satisfaction of such SSO Supplier's Independent Credit Requirement.

**Indicative Offer** means a Qualified Bidder's Indicative Offer that specifies two (2) numbers of Tranches for each Product in the auction. For each Product, the first number represents the number of Tranches that the Qualified Bidder is willing to serve at the Minimum Starting Price for the Product and the second number represents the number of Tranches that the Qualified Bidder is willing to serve at the Maximum Starting Price for the Product.

**Information Website** means [www.duke-energyohiocbp.com](http://www.duke-energyohiocbp.com) which is the Website that will be the primary online source of information about the CBP auctions.

**Initial Eligibility** means Bidder's Eligibility for round 1 of the auction.

**Joint Venture** means an enterprise entered into by two or more people for profit with the purpose of bidding in the CBP. A Joint Venture has most of the elements of a partnership, such as shared management, the power of each venture to bind the others in the business, division of

profits, and joint responsibility for losses. However, unlike a partnership, a Joint Venture anticipates a specific area of activity and/or period of operation, so after the purpose is completed, bills are paid, profits (or losses) are divided, and the Joint Venture is terminated.

**Kilowatt ("kW")** means a unit of measurement of useful power equivalent to 1,000 watts.

**Kilowatt-hour ("kWh")** means one Kilowatt of electric power used over a period of one hour.

**Legal Representative** means legal counsel or a representative agent who is authorized and agrees to accept service of process on the Applicant's behalf; must have an address in Ohio.

**Letter of Credit** means a standby irrevocable letter of credit acceptable to the Company in substantially similar form as set forth in Attachment E of the Master SSO Supply Agreement and including all of the requirements specifically set forth in Section 5.9 of the Master SSO Supply Agreement.

**Letter of Intent to Provide a Guaranty** means a document that may be issued by Qualified Bidder's Guarantor during the Part 2 Application process. The letter indicates that an ICT Guaranty will be provided once the Master SSO Supply Agreement is signed.

**Letter of Reference** means a document that may be issued by a Qualified Bidder's bank during the Part 2 Application process. The letter specifies the amount of revolving credit provided to the Bidder by the bank. The letter also states that there is sufficient unused availability to issue a Letter of Credit for the amount indicated in the Bidder's Part 2 Application.

**Load Serving Entity (LSE)** has the meaning set forth in the applicable PJM Agreements.

**Master Standard Service Offer Supply Agreement (Master SSO Supply Agreement or Agreement)** means the standard contract that will be used by the winning Bidders and Duke Energy Ohio.

**Maximum Starting Price:** The Maximum Starting Price is the maximum Announced Price for a Product that can be set for round 1.

**Megawatt (MW)** means one thousand Kilowatts.

**Megawatt-hour (MWh)** means one Megawatt of electric power used over a period of one hour.

**Minimum Starting Price:** The Minimum Starting Price is the minimum Announced Price for a Product that can be set for round 1.

**NERC** means the North American Electric Reliability Council or its successor.

**Network Integrated Transmission Services ("NITS")** has the meaning set forth in the applicable PJM Agreements.

**Notification of Qualification** means the notification sent by the Auction Manager to an Applicant once the Applicant becomes a Qualified Bidder. The Notification is in the format set forth in the Part 1 Application.

**Notification to Registered Bidders** means the notification sent by the Auction Manager to the Qualified Bidder once the Qualified Bidder becomes a Registered Bidder. The Notification is in the format set forth in Part 2 Application.

**Over-Subscribed:** means supply for a Product (*i.e.*, the number of Tranches bid) is greater than the Product's Tranche Target.

**Part 1 Application** means the first of the two parts of the application process for prospective Bidders to participate in the CBP.

**Part 1 Application Due Date** means the date specified in the timeline on the Information Website.

**Part 2 Application** means the second of the two parts of the application process for prospective Bidders to participate in the CBP.

**Part 2 Application Due Date** means the date specified in the timeline on the Information Website.

**Party** has the meaning set forth in the preamble to the Master SSO Supply Agreement, and includes such Party's successors and permitted assigns.

**Person** means an individual, partnership, joint venture, corporation, limited liability company, trust, association or unincorporated organization, any Governmental Authority, or any other entity.

**PJM** means the PJM Interconnection, LLC or any successor organization thereto.

**PJM Agreements** means the PJM OATT, PJM Operating Agreement, PJM RAA and any other applicable PJM manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.

**PJM Control Area** means the control area recognized by NERC as the PJM Control Area.

**PJM E-Account** means an account obtainable through PJM that provides access to web-based PJM settlement, accounting, marketing and other informational and economic systems.

**PJM OATT ("PJM Tariff")** means the Open Access Transmission Tariff of PJM or the successor, superseding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

**PJM Operating Agreement** means the Amended and Restated Operating Agreement of PJM or the successor, superseding or amended versions of the Amended and Restated Operating Agreement that may take effect from time to time.

**Pre-Bid Security** means the Pre-Bid Security posted by each Qualified Bidder sufficient for its Indicative Offer. Pre-Bid Security to be posted by a Qualified Bidder included in its Part 2 Application consists of cash or a Letter of Credit and, if necessary, a Letter of Reference and/or a Letter of Intent to provide a Guaranty. A Qualified Bidder in the CBP is notified upon qualification whether a Letter of Reference or a Letter of Intent to provide a Guaranty is required.

**Price Decrement** means the reduction in the Announced Price for a given Product from one round to the next round of the auction.

**Product** means the SSO Load of Duke Energy Ohio for the Delivery Period, as determined by the PUCO.

**PUCO** means the Public Utilities Commission of Ohio, or any successor thereto.

**PUCO Consultant** means any firm and/or individual(s) retained by the PUCO for purposes of assisting the PUCO or PUCO Staff.

**Qualified Bidder** means a Party that has successfully completed a Part 1 Application.

**Registered Bidder** means a Party that has successfully completed a Part 2 Application.

**Registered User** means a Party that has registered through the Information Website to receive information about the CBP.

**Service Territory** means the geographic areas of the State of Ohio in which the Company serves Customers.

**Solicitation** means the Competitive Bidding Process by which the counterparty, quantity, pricing and other terms of the Master SSO supply Agreement are established.

**Special Contract Customers** means customers that take retail generation service from the Company under terms and conditions different than the otherwise applicable tariff.

**SSO Customers** means Residential Customers, Commercial Customers and Industrial Customers, and Lighting Customers, including Special Contract (SC) Customers, taking SSO Supply during the Delivery Period.

**SSO Load** means the full electricity requirements for SSO Service by SSO Customers.

**SSO Service** means Standard Service Offer service that is not provided by a CRES supplier.

**SSO Supplier** has the meaning set forth in the preamble of the Master SSO Supply Agreement.

**SSO Supplier Responsibility Share** means, for each SSO Supplier, the fixed percentage share of the SSO Load for which the SSO Supplier is responsible as set forth in Attachment A of the Master SSO Supply Agreement. The stated percentage share is determined by dividing the number of Tranches won by the SSO Supplier in the Solicitation by the total number of Tranches.

**SSO Supply** means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by the Company pursuant to Section 3.2(c) of the Master SSO Supply Agreement, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that an SSO Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service.

**Standard Service Offer** means a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

**Starting Price** means the announced price for a product in effect for round 1 of the auction for the product.

**Subscribed:** means a Product is subscribed if supply (*i.e.*, the number of Tranches bid) is equal to the Product's Tranche Target.

**Summer Factor:** To determine the \$/MWh price to be paid to an SSO Supplier during June 1 through August 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Summer Factor.

**Term** has the meaning set forth in Section 2.1 of the Master SSO Supply Agreement.

**Tranche** means a fixed percentage share of the SSO Load, excluding Capacity, as determined for the purposed of the Solicitation conducted to procure SSO Supply for the SSO load.

**Tranche Target** means the number of Tranches for a Product intended to be procured for the Product in the auction.

**UCC** means the Uniform Commercial Code.

**Under-Subscribed:** means a product is under-subscribed if supply (*i.e.*, the number of Tranches bid) is less than the Product's Tranche Target.

**Winning Bidder(s)** means the Registered Bidders that have won Tranches in the auction.

**Winning Price** means for a Product is the price to be paid to each Winning Bidder having won one or more Tranches for the Product.

**Winter Factor:** To determine the \$/MWh price to be paid to an SSO Supplier during January 1 through May 30 and September 1 through December 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Winter Factor.



Notice to Parties in Previous SSO Proceeding

June 20, 2011

**VIA ELECTRONIC MAIL**

**To:** Parties of Record

*In the Matter of the Application of Duke Energy Ohio for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service, Case No. 10-2586-EL-SSO.*

**Re:** *In the Matter of the Application of Duke Energy Ohio for Authority to establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service Case No. 11-3549-EL-SSO, et al.*

Dear Parties of Record:

Pursuant to R.C. 4901:1-35-04(A), this letter will serve as notification that, on this date, Duke Energy Ohio, Inc., has filed an application for approval, by the Public Utilities Commission of Ohio (PUCO), of a new standard service offer. A copy of the application and all waiver requests are available through the Duke Energy Ohio website at [www.duke-energy.com](http://www.duke-energy.com) and through the PUCO website at [www.puc.state.oh.us](http://www.puc.state.oh.us). Copies of the filing are also available at Duke Energy Ohio's main business office located at 139 E. Fourth Street, Cincinnati, Ohio 45202 or at the PUCO offices at 180 Broad Street, Columbus, Ohio 43215.

Should you have any questions or comments regarding this matter, please do not hesitate to contact me.

Very truly yours,

Amy B. Spiller  
Deputy General Counsel

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing letter Notice of Filing of Duke Energy Ohio was served on the following parties this 20th day of June, 2011, by regular U. S. Mail, overnight delivery, or electronic delivery.

<hr/> <b>Amy B. Spiller</b>	
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**Proposed Notice for Newspaper Publication**

**Pursuant to O.A.C. 4901:1-35-04(B)**

**LEGAL NOTICE**

Duke Energy Ohio, Inc., has filed with the Public Utilities Commission of Ohio (PUCO) Case No. 11-3549-EL-SSO, *In the Matter of the Application of Duke Energy Ohio for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Accounting Modifications and Tariffs for Generation Service, et al.* In this proceeding, the Commission will consider Duke Energy Ohio's request for approval of its new Electric Security Plan (ESP), which includes its standard service offer (SSO), effective from January 1, 2012, through May 31, 2021. The ESP includes provisions regarding the supply of capacity to all customers, the acquisition and pricing of energy to serve SSO customers through a series of auctions, economic development, and other matters.

It is anticipated that overall rates for all customer classes under the proposed ESP will remain approximately the same as they are currently. Duke Energy Ohio proposes to recover other costs through riders during the ESP period; however, those costs and the subsequent rate impacts are not known at this time.

Any person may request to become a party to the proceeding.

Further information may be obtained by contacting the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, viewing the Commission's web page at <http://www.puc.state.oh.us>, clicking on the link to the Docketing Information System, and entering Case No. 11-xxxx-EL-SSO, or contacting the Commission's call center at 1-800-686-7826.

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Establish a	)	
Standard Service Offer Pursuant to Section	)	
4928.143, Revised Code, in the Form of	)	Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting	)	
Modifications and Tariffs for Generation	)	
Service.	)	
In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.	)	
In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.	)	

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**VOLUME II**

**TESTIMONY**

---

**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Establish a	)	
Standard Service Offer Pursuant to Section	)	
4928.143, Revised Code, in the Form of	)	Case No. 11-3549-EL-SSO
an Electric Security Plan, Accounting	)	
Modifications and Tariffs for Generation	)	
Service.	)	
In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3550-EL-ATA
Certified Supplier Tariff, P.U.C.O. No. 20.	)	
In the Matter of the Application of Duke	)	
Energy Ohio for Authority to Amend its	)	Case No. 11-3551-EL-UNC
Corporate Separation Plan.	)	

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**DIRECT TESTIMONY OF**

**B. KEITH TRENT**

**ON BEHALF OF**

**DUKE ENERGY OHIO, INC.**

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June 20, 2011

## **TABLE OF CONTENTS**

	<b><u>PAGE</u></b>
<b>I. INTRODUCTION.....</b>	<b>1</b>
<b>II. BACKGROUND .....</b>	<b>4</b>
<b>III. DUKE ENERGY OHIO'S PROPOSED ELECTRIC SECURITY PLAN .....</b>	<b>12</b>
<b>IV. INTRODUCTION OF WITNESSES.....</b>	<b>29</b>
<b>V. CONCLUSION .....</b>	<b>33</b>



## **I. INTRODUCTION**

1   **Q.   PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

2   A.   My name is B. Keith Trent, and my business address is 526 South Church Street,  
3       Charlotte, North Carolina 28202.

4   **Q.   BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

5   A.   I am employed by Duke Energy Business Services LLC (DEBS), as Group  
6       Executive and President of the Commercial Businesses organization for Duke  
7       Energy Corporation (Duke Energy). DEBS provides various administrative and  
8       other services to Duke Energy Ohio, Inc., (Duke Energy Ohio) and other affiliated  
9       companies of Duke Energy.

10  **Q.   PLEASE BRIEFLY DESCRIBE YOUR EDUCATION AND**  
11  **PROFESSIONAL AFFILIATIONS.**

12  A.   I received a Bachelor of Science degree in electrical engineering, with honors,  
13       from Southern Methodist University and a Juris Doctor degree, with high honors,  
14       from the University of Texas College of Law. I also completed the Harvard  
15       Business School Advanced Management Program and the Reactor Technology  
16       Course for Utility Executives at the Massachusetts Institute of Technology. I am  
17       licensed to practice law in North Carolina and Texas, as well as numerous federal  
18       district courts and the United States Supreme Court. I am also a member of  
19       various bar associations. I am a member of the board of directors of Bright  
20       Automotive, Inc., the board of trustees of The Keystone Center, and I am co-chair  
21       of The Keystone Energy Board. I serve on the boards of visitors of the Wake

1 Forest University School of Business and Charlotte Country Day School. I was  
2 recently named Chair of New Leaders for New Schools Charlotte.

3 **Q. PLEASE DESCRIBE YOUR BUSINESS BACKGROUND AND**  
4 **EXPERIENCE.**

5 A. I joined Duke Energy in May 2002 as General Counsel, Litigation. I was  
6 responsible for managing all major litigation and government investigations for  
7 Duke Energy. The labor and employment and the environmental, health, and  
8 safety legal teams also reported to me. I was named Group Vice President,  
9 General Counsel, and Secretary in June 2005 and Group Executive and Chief  
10 Development Officer in April 2006. In this latter role, I led corporate  
11 development, including corporate strategy, and mergers and acquisitions. I was  
12 named Group Executive and Chief Strategy and Policy Officer in September 2006  
13 and, in July 2008, I became Group Executive and Chief Strategy, Policy and  
14 Regulatory Officer. In that role, each of the presidents of Duke Energy's utility  
15 operating companies reported to me. I was named to my current position in July  
16 2009.

17 Before coming to Duke Energy in 2002, I served as a partner in the law  
18 firm Snell, Brannian and Trent. Prior to that, I was an attorney at Jackson Walker  
19 in Dallas, Texas. I began my career as a reservoir/production engineer with  
20 ARCO Oil & Gas in Houston in 1982.

1   **Q.   WHAT ARE YOUR RESPONSIBILITIES IN YOUR CURRENT**  
2       **POSITION?**

3   A.   I am responsible for the successful operation and management of Duke Energy's  
4       commercial businesses. Specifically, I am responsible for Duke Energy  
5       Generation Services, which includes the wind generation business; Midwest  
6       Commercial Generation; Duke Energy International, with primary operations in  
7       Latin America; and Duke Energy's investment in the DukeNet joint venture with  
8       Alinda Capital Partners. DukeNet is a telecommunications business. I am also  
9       responsible for all strategy and policy matters related to Duke Energy's  
10      commercial businesses.

11   **Q.   HAVE YOU EVER TESTIFIED BEFORE THE PUBLIC UTILITIES**  
12      **COMMISSION OF OHIO?**

13   A.   Yes. Earlier this year, I testified before the Public Utilities Commission of Ohio  
14      (Commission) in connection with the Company's request for approval of a market  
15      rate offer (MRO), in Case No. 10-2586-EL-SSO.

16   **Q.   WHAT IS THE PURPOSE OF YOUR TESTIMONY IN THIS**  
17      **PROCEEDING?**

18   A.   The purpose of my testimony is to provide an overview of the Company's  
19      proposed electric security plan (ESP), with reference to relevant facts that  
20      influenced the Company's decision to file this plan. I also address the benefits that  
21      this plan provides to our customers and investors and its favorable impact on  
22      Ohio's competitive market. In that regard, I summarize how Duke Energy Ohio's  
23      proposed ESP is more favorable in the aggregate than the expected results under

1 the MRO provisions set forth in R.C. 4928.142. Finally, I introduce the various  
2 witnesses and identify the subject matters on which they will testify in this  
3 proceeding.

## 4 II. BACKGROUND

4 Q. PLEASE IDENTIFY THE EXTERNAL CONSIDERATIONS RELEVANT  
5 TO DUKE ENERGY OHIO'S PROPOSED ESP.

6 A. Duke Energy Ohio's proposed ESP was influenced, in part, by the wholesale  
7 power market, including the volatile and unpredictable nature of that market, and  
8 Ohio's regulatory framework in which we must operate.

9 Q. WHAT ARE THE COMPONENTS OF THE WHOLESALE POWER  
10 MARKET THAT MAY HAVE INFLUENCED DUKE ENERGY OHIO'S  
11 PROPOSED ESP?

12 A. Today's power markets are primarily comprised of capacity and energy. And  
13 although separate components, both capacity and energy are needed to provide  
14 generation service.

15 Capacity can be described as the physical plant, or "steel in the ground,"  
16 and represents the maximum amount of electric power or energy that a generating  
17 plant or unit can produce at a specific point in time under certain conditions.  
18 Capacity is necessary to ensure that there is sufficient energy for customers when  
19 they are operating at their highest demand. Capacity can also include resources  
20 such as Demand Response and Energy Efficiency that help to ensure the supply-  
21 demand balance. Capacity is typically measured in megawatts (MW).

1           Energy is the actual output from the generating plant or unit over time. The  
2           amount of energy actually produced from a specific plant or unit is dependent upon  
3           the amount demanded by customers, up to the maximum capacity rating of the plant  
4           or unit. For purposes of simple illustration, a generating plant (or the capacity)  
5           converts fuel (such as coal) into energy. Energy prices are based upon the marginal  
6           costs of production, which include fuel and emission costs. Energy is measured in  
7           megawatt-hours (MWh).

8   **Q.   PLEASE EXPLAIN HOW THE WHOLESALE MARKET INTERACTS**  
9   **WITH THE COMPETITIVE RETAIL MARKET, WITH FOCUS ON THE**  
10   **COMPETITIVENESS AND TERM OF THE MARKET FOR EACH**  
11   **COMPONENT.**

12   A.   The competitive retail market in Ohio continues to develop, but retail prices are  
13           highly dependent upon the underlying wholesale market prices. For the energy  
14           component of the retail price, there is a liquid wholesale market that can allow for  
15           price transparency and certainty of price for three to four years forward. For  
16           capacity, there are two pricing alternatives in PJM Interconnection, L.L.C.,  
17           (PJM). The first alternative is the Reliability Pricing Model (RPM), pursuant to  
18           which PJM conducts a three-year forward auction to acquire the capacity needed  
19           to satisfy its reliability requirement and to determine the price of capacity paid by  
20           all customers who do not elect the second alternative.

21           The second alternative is the Fixed Resource Requirement (FRR), where a  
22           load serving entity opts out of the RPM and instead secures its own capacity  
23           outside of the competitive market. The price for capacity that FRR entities charge

1 their customers may be market-based, cost-based, or a combination thereof.  
2 Alternatively, the capacity price may be a state-determined rate.

3 Thus, regardless of whether capacity prices are established using the RPM  
4 rate, as in the case for customers of FirstEnergy's Ohio distribution companies, or  
5 via a cost-based, state-determined rate under the FRR alternative as proposed  
6 here, competitive suppliers do not compete on capacity. Rather, they compete on  
7 energy.

8 **Q. IS THE WHOLESALE POWER MARKET A VOLATILE MARKET?**

9 A. Yes. As detailed in the Direct Testimony of Duke Energy Ohio witness Judah L.  
10 Rose, wholesale market capacity prices have been volatile and are projected to  
11 continue to be volatile. In addition, prices are expected to increase substantially  
12 compared to current market prices, due to new environmental regulations and the  
13 anticipated retirement of aging, unscrubbed coal plants. Indications of such an  
14 increase in the wholesale market capacity price were evident in the recent base  
15 residual auction conducted by PJM on May 3, 2011, the results of which were  
16 published on May 13, 2011. The auction results for the 2014/2015 delivery year  
17 were 354 percent higher than the auction results for the prior delivery year,  
18 2013/2014.<sup>1</sup>

19 It is undeniable that existing capacity, *i.e.*, generating plants, will be retired.  
20 American Electric Power has declared its intention of retiring 6,000 MW of coal  
21 generating capacity in the region, including 2,785 MW of coal generating capacity

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<sup>1</sup> See *PJM 2014/2015 RPM Base Residual Auction Results*, page 4 (Clearing price of \$27.73/MW-day for 2013/2014 and \$125.99/MW-day for 2014/2015). Report available at [www.pjm.com](http://www.pjm.com).

1 owned by its Ohio operating companies.<sup>2</sup> Other retirements in the region are  
2 probable. And, until market prices for capacity are significantly and sustainably  
3 higher than they are today and energy prices are extreme, new generation will not be  
4 built. In the most recent PJM auction, the net Cost of New Entry (CONE) was \$342  
5 per MW-Day.<sup>3</sup> Although the net CONE is not predicated on costs related to new,  
6 base load generation, even these results suggest that no one will build new  
7 generation until market prices approach and exceed net CONE as, understandably,  
8 an investor would need a reasonable return on the capital invested for new  
9 generation. Further, potential investors would have to have reason to believe that  
10 prices at no less than that level would be sustained for the foreseeable future. These  
11 recent events – the PJM auction and announced plans to retire existing generation –  
12 underscore that the wholesale capacity prices will increase. And where retail rates  
13 are derived, in part, from the wholesale capacity market, customers are exposed to  
14 price volatility and instability. This unpredictability is further compounded by what  
15 has been the short-term nature of ESPs, which does not provide ongoing certainty in  
16 the supply and pricing of any aspect of generation service. A longer term ESP  
17 allows businesses, such as competitive suppliers, to make decisions about entering  
18 the Duke Energy Ohio market and investing the resources necessary to develop  
19 lasting relationships with customers.

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<sup>2</sup> *AEP – Q1 2011 American Electric Power Co., Inc., Earnings Conference Call, Final Transcript*, page 4 (April 21, 2011). See also, *Columbus Dispatch*, June 10, 2011 (EPA rules could result in closing of eleven power plants and the loss of 600 jobs).

<sup>3</sup> Cost of new entry is based upon the capital costs associated with new combustion turbines, net of projected revenues for sales of energy and ancillary services. See *PJM 2014/2015 RPM Base Residual Auction Planning Parameters*, page 7 at Table 5. Report available at [www.pjm.com](http://www.pjm.com).

1 Q. PLEASE DISCUSS HOW OHIO'S REGULATORY STRUCTURE  
2 INFLUENCED THE COMPANY'S PROPOSED ESP.

3 A. Senate Bill 3 (S.B. 3) was adopted in 1999, with the purpose of encouraging the  
4 development of competition in the retail electric market. Under S.B. 3, the electric  
5 distribution utilities (EDUs) were required to separate generation, transmission,  
6 and distribution and were not restricted in their ability to transfer their generating  
7 assets at the conclusion of the market development period. Consistent with the  
8 provisions of S.B. 3, Duke Energy Ohio initially provided utility service pursuant  
9 to a market development plan. Significantly, under the Company's market  
10 development plan, a competitive market was to be deemed to exist with regard to  
11 commercial and industrial customers when 20 percent of those customers  
12 switched to competitive suppliers (assuming that the Company did not have an  
13 affiliated competitive retail provider – as it did not).<sup>4</sup> But that level of switching  
14 was not exceeded. Indeed, the competitive market did not develop as  
15 contemplated under S.B. 3 and the EDUs, including Duke Energy Ohio, then  
16 operated under approved rate stabilization plans. Although not expressly  
17 authorized by statute, these plans were allowed in light of the lack of competition  
18 and a desire to stabilize electricity prices.

19 As the rate stabilization plans were scheduled to expire at the end of 2008,  
20 the Ohio legislature enacted Amended Substitute Senate Bill 221 (S.B. 221).  
21 Under the statutes that were amended by S.B. 221, each EDU is required to

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<sup>4</sup> *In the Matter of the Application of The Cincinnati Gas & Electric Company for Approval of its Electric Transition Plan, Approval of Tariff Changes and New Tariffs, Authority to Modify Current Accounting Procedures, and Approval to Transfer its Generating assets to an Exempt Wholesale Generator*, Case No. 99-1658-EL-ETP, *et al.*, Opinion and Order at page 6 (August 31, 2000).



1 provide a standard service offer (SSO) in the form of either an ESP or an MRO.  
2 Furthermore, following the passage of S.B. 221, an EDU that continued to own  
3 generating assets could not transfer those assets absent Commission approval.  
4 Consequently, for EDUs that continued to own generating facilities, including  
5 Duke Energy Ohio, S.B. 221 created a "lower of SSO price or market" tension.

6 **Q. PLEASE EXPLAIN WHAT YOU MEAN BY A "LOWER OF SSO PRICE**  
7 **OR MARKET" TENSION.**

8 **A.** The "lower of SSO price or market" tension is created by the free option that  
9 customers have to switch providers. When market prices are lower than the  
10 utility's pre-set SSO price, customers have an economic incentive to switch away  
11 from that utility. The EDU must then sell the capacity and energy from its  
12 generating assets into the wholesale market, at the lower market prices.  
13 Conversely, if market prices exceed the utility's established SSO price, customers  
14 return, but not always at the higher market rate. Rather, they may return at the  
15 lower, SSO rate. Thus, while the customer has a backstop for increasing prices,  
16 the EDU has no safety net from dramatically falling markets, as has been  
17 experienced by Duke Energy Ohio since 2009. The "lower of SSO price or  
18 market" tension is exacerbated by the significantly excessive earnings test to  
19 which EDUs operating under an ESP are subject. As I have said before, Duke  
20 Energy Ohio is in a "no man's land" in that we are not a fully merchant operation  
21 and we are subject to unlimited downside.

1    **Q.    DID THIS “LOWER OF SSO PRICE OR MARKET” TENSION AFFECT**  
2           **DUKE ENERGY OHIO’S DECISION TO SEEK APPROVAL OF AN**  
3           **MRO?**

4    A.    Yes. The MRO would have put the Company on a path toward the certainty of a  
5           pure market situation where we would be in a position to evaluate risk on a longer  
6           term basis. The MRO was also consistent with our customers’ overwhelming  
7           acceptance of choice. The MRO option also would have positioned the Company  
8           to transfer its generating assets, thereby realizing one of the original aspects of the  
9           state’s deregulation plans and the complete separation of services. I would note  
10          that, while the MRO option would have allowed the Company to move fully  
11          toward the market end of the continuum, the proposed ESP option  
12          correspondingly allows the Company, in a different way, to avoid the “lower of  
13          SSO price or market” tension. On balance, Duke Energy Ohio’s proposed ESP is  
14          a better option for the state and our customers, as I elucidate below.

15   **Q.    YOU       PREVIOUSLY       IDENTIFIED       TWO       EXTERNAL**  
16          **CONSIDERATIONS    THAT    INFLUENCED    THE    COMPANY’S**  
17          **PROPOSED ESP. ARE THERE OTHER FACTORS OR OBJECTIVES**  
18          **THAT INFLUENCED THE PROPOSED PLAN?**

19   A.    As our filing confirms, the objective of our proposed ESP from the customer  
20          perspective is to achieve reasonable and stable pricing for an extended period,  
21          while ensuring customers the opportunity to engage in choice. From the  
22          Company’s perspective, the objective is to earn fair and reasonable returns and  
23          achieve stable cash flows, supporting the financial strength of the Company and

1 its ability to continue making dividend payments to its shareholders. That is, the  
2 proposed ESP fits within Duke Energy's shareholder value proposition. For  
3 wholesale suppliers, the objective of this ESP is to perpetuate an open, fair, and  
4 transparent wholesale market. And this wholesale market enables sustained  
5 opportunity for competitive retail electric service (CRES) providers at the retail  
6 level. A final objective of the ESP benefits all interested stakeholders in that it is  
7 predicated upon the continued, financial independence of southwest Ohio. More  
8 specifically, through the proposed ESP, we seek to establish a new economic  
9 development initiative – Advance Southwest Ohio – to support our service  
10 territory and the state's overall goal of creating and retaining jobs in Ohio.

11 **Q. PLEASE EXPLAIN DUKE ENERGY'S SHAREHOLDER VALUE**  
12 **PROPOSITION.**

13 A. Investors expect to earn a return commensurate with the risk of their investment.  
14 As a whole, Duke Energy is predominately a regulated utility business. As a  
15 result, investors value the Company's ability to earn a fair and reasonable return  
16 on its investments as well as to achieve relative stability in cash flows, supporting  
17 the dividend payment to shareholders. Providing fair and reasonable returns to  
18 investors supports the financial strength of the Company. As further discussed in  
19 the Direct Testimony of Duke Energy Ohio witness Stephen G. De May, the  
20 financial strength of the Company provides greater assurance of access to capital  
21 on reasonable terms, which is necessary to provide cost-effective, safe, and  
22 environmentally compliant and reliable service to customers.

### **III. DUKE ENERGY OHIO'S PROPOSED ELECTRIC SECURITY PLAN**

1   **Q.   PLEASE PROVIDE AN OVERVIEW OF THE COMPANY'S PROPOSED**  
2       **ESP.**

3   **A.**   In this ESP, Duke Energy Ohio is proposing to insulate customers, over a  
4       substantial period of time, from the vagaries of the wholesale capacity market  
5       and, thereby, to mitigate volatility in the overall price of their generation service.  
6       Toward that end, we are proposing an ESP that commences on January 1, 2012,  
7       and lasts through May 31, 2021, and that contains the following elements:

- 8           -   **Retail Capacity Rider (Rider RC)** – The ESP will include an  
9               unavoidable charge for capacity based on the embedded cost of  
10              providing a reliable and adequate supply of capacity, including a rate  
11              of return, using Duke Energy Ohio's Legacy Generating Assets<sup>5</sup> and  
12              any costs to acquire additional capacity to meet minimum reserve  
13              requirements.
- 14          -   **Profit Sharing Mechanism (Rider PSM)** – In exchange for  
15               recovering from all customers the embedded cost of generation  
16               capacity, the Company is proposing to credit all retail customers  
17               (regardless of shopping status) with almost all of the net profits  
18               derived from the ownership of such generating assets. More  
19               specifically, customers will be allocated 80 percent of the net profits,  
20               with the Company allocated 20 percent. Of those shares, a portion will

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<sup>5</sup> Duke Energy Ohio witness Salil Pradhan defines the Legacy Generating Assets in his Direct Testimony.

1 be directed to economic development initiatives. Specifically, 5  
2 percent of the customers' 80 percent share of such profits and 5  
3 percent of the Company's 20 percent share of such profits will make  
4 up the funding for the proposed economic development proposal.  
5 Rider PSM acts as a natural hedge against higher energy prices that  
6 customers may see in the market and, through a sharing mechanism,  
7 aligns the Company's interests in the profitability of these assets with  
8 those of its customers.

- 9 - **Retail Energy Rider (Rider RE)** – The Company will procure all of  
10 the energy needed for its SSO load via a competitive auction format.  
11 The results of these wholesale auctions will be used to derive retail  
12 rates for energy and, in part, for purposes of establishing the price  
13 against which CRES providers compete. Wholesale suppliers will  
14 compete for a portion of the Company's SSO load and generation  
15 ownership is not a requirement to participation.
- 16 - **Alternative Energy Resource Rider (Rider AER-R)** – The  
17 Company is obligated, under R.C. 4928.64, to meet certain alternative  
18 energy resource requirements. Recovery of the costs incurred to meet  
19 these requirements is authorized by statute and thus the Company  
20 proposes Rider AER-R to enable such recovery.
- 21 - **Uncollectible Expense Rider for Generation (Rider UE-GEN)** –  
22 This rider serves to expand the Company's current Purchase of  
23 Accounts Receivable program and aligns the recovery of bad debt

1 expense with the accepted process used in our natural gas business.

2 The Commission has previously acknowledged that this rider, as  
3 proposed, furthers state policy by promoting competition.<sup>6</sup>

4 - **Reconciliation Rider (Rider RECON)** – This rider is intended only  
5 to true up any under- or over-recovery of existing riders that will  
6 expire upon the approval of the proposed ESP. The riders to be  
7 reconciled are Duke Energy Ohio's Rider PTC-FPP (price-to-compare  
8 – fuel and purchased power) and Rider SRA-SRT (system resource  
9 adequacy – system reliability tracker).

10 - **Distribution Reliability Rider (Rider DR)** – This rider is intended to  
11 recover incremental investment in the Company's distribution system  
12 and to remove any disincentive on Duke Energy Ohio's part in respect  
13 of encouraging energy efficiency.

14 Upon approval and implementation of the proposed ESP, all of the  
15 Company's existing generation-related riders will be terminated. For a detailed  
16 discussion of the riders proposed in this ESP, see the Direct Testimony of Duke  
17 Energy Ohio witnesses William Don Wathen Jr., James E. Ziolkowski, and  
18 Jeffrey R. Bailey.

19 **Q. WHY IS DUKE ENERGY OHIO PROPOSING THIS ESP?**

20 **A.** As I mentioned, the intent of this ESP is to balance our customers' expectation of  
21 reliable service at stable and reasonable prices with the Company's need for

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<sup>6</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Approval of a Market Rate Offer to Conduct a Competitive Bidding Process for a Standard Service Offer Electric Generation Supply, Accounting Modifications, and Tariffs for Generation Service, Case No. 10-2586-EL-SSO, Opinion and Order, at page 60 (February 23, 2011).*

1       earning fair and reasonable returns and achieving stable cash flows, supporting  
2       the financial strength of the Company. As I discussed previously, Duke Energy  
3       Ohio's current ESP has resulted in challenges in the Company's ability to earn  
4       fair and reasonable returns and generate stable cash flows. By bifurcating the  
5       capacity and energy components of the price of electricity, the proposed structure  
6       enables more adequate opportunities for the Company to earn a fair and  
7       reasonable return on its investments while continuing to support the competitive  
8       market for energy.

9               The proposed ESP structure is not new or innovative to the Company.  
10       Rather, it was developed with reference to Duke Energy Ohio's natural gas  
11       operations. Duke Energy Ohio is the only remaining natural gas local distribution  
12       company in Ohio that still provides a traditional gas cost recovery commodity  
13       service. And borrowing from our natural gas business, we are proposing an ESP  
14       that enables the Company to recover its costs of, and a reasonable return for,  
15       maintaining its generation fleet. This is an improvement compared to customer  
16       exposure to the volatile, wholesale capacity market and makes energy purely  
17       competitive in the retail market while enhancing the opportunity for more  
18       dynamic pricing offers.

19   **Q.   PLEASE PROVIDE ADDITIONAL DETAIL CONCERNING THE**  
20   **BENEFITS TO CUSTOMERS OF DUKE ENERGY OHIO'S PROPOSED**  
21   **ESP.**

22   **A.**   As Duke Energy Ohio witness Rose discusses, the wholesale power market is  
23       volatile and unpredictable. Such volatility and unpredictability are seen in retail

1 rates, due to the substantial dependence of retail rates on wholesale prices. But  
2 under the proposed plan, customers are afforded significant price stability as  
3 generation service has been bifurcated to include a cost-based price for capacity  
4 and a competitively determined price for energy. This rate stability is further  
5 enhanced by the profit-sharing mechanism incorporated into the plan.  
6 Significantly, the net profits associated with Duke Energy Ohio's coal-fired  
7 generating assets that were considered to be used and useful prior to the advent of  
8 deregulation in Ohio (collectively, the Legacy Generating Assets) generally will  
9 be shared between customers and the Company via a non-bypassable crediting  
10 mechanism. Under Duke Energy Ohio's proposal, the majority of the net profits<sup>7</sup>  
11 will be allocated to customers, with the balance allocated to the Company and to  
12 funding a new and innovative economic development program. The energy credit  
13 will have the practical effect of reducing the capacity charge for all retail  
14 customers in Duke Energy Ohio's service territory. Thus, should the market  
15 prices for energy increase, the net profits to be shared with customers should  
16 increase concomitantly. And, as a result, the capacity charge would be reduced  
17 further.

18 Importantly, a cost-based approach insulates customers from what have  
19 been, and are projected to be, volatile capacity prices. The resultant predictability  
20 in electric rates is likely to be attractive to businesses already in Duke Energy  
21 Ohio's service territory, as well as those that may be contemplating operations in

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<sup>7</sup> Eighty percent of the net profits will be initially allocated to customers. Of that allocation, 5 percent will be directed toward economic development. The net result is that 76 percent of the net profits will benefit customers.



1 Duke Energy Ohio's service territory. Indeed, it is reasonable to expect that some  
2 businesses operate pursuant to long-range business plans or models and that a rate  
3 structure exceeding nine years will enable existing and prospective non-  
4 residential customers to accurately develop and execute their business plans. And  
5 all customers – residential and non-residential – retain the right to choose their  
6 energy supplier. Duke Energy Ohio witness Rose provides a comparison of the  
7 Company's proposed ESP pricing and the pricing that would results under an  
8 MRO.

9 **Q. DO YOU BELIEVE THAT CUSTOMERS ARE CONCERNED WITH THE**  
10 **VOLATILITY IN THE MARKET?**

11 A. I believe that the record developed in our MRO proceeding unequivocally  
12 demonstrates that customers are concerned with volatility in market prices.  
13 Indeed, Duke Energy Ohio was met with strong opposition when it proposed to  
14 accelerate its migration to full market prices in order to enable all of its SSO  
15 customers to benefit from the currently low market prices. All of the Company's  
16 customer groups resisted this proposal, referencing the volatile and dynamic  
17 nature of the electricity markets. Parties to the MRO proceeding also contested  
18 Duke Energy Ohio's future intention of transferring its generating assets as they  
19 viewed those assets as protection against market exposure.

20 **Q. HOW IS THE COMPANY'S ELECTION AS AN FRR ENTITY**  
21 **RELEVANT TO ITS PROPOSED ESP?**

22 A. As I discussed earlier, there are two alternatives for pricing capacity in PJM.  
23 Under the first option, the VRR, the wholesale capacity price is equal to the

1 market price, as determined by PJM's base residual auctions. And where the retail  
2 price for capacity is derived from the wholesale price, which is the case where  
3 wholesale auctions such as those conducted by FirstEnergy's Ohio distribution  
4 utilities are used to secure capacity for the SSO load, those market prices are  
5 simply passed through to retail customers.

6 The second alternative, the FRR, presents options for the Company in  
7 respect of capacity pricing. Again, the price could be based on market, cost, some  
8 combination thereof, or a state determination. By electing the FRR option, the  
9 Company is seeking a capacity rate that is largely predicated upon its costs,  
10 thereby shielding retail customers from the volatile capacity market without  
11 adversely affecting competitive suppliers. Duke Energy Ohio witness Kenneth J.  
12 Jennings addresses the Company's FRR election.

13 **Q. PLEASE EXPLAIN HOW THE PROPOSED ESP BENEFITS DUKE**  
14 **ENERGY OHIO.**

15 A. The proposed ESP provides a greater amount of financial certainty regarding the  
16 recovery of the Company's costs of maintaining its generation fleet to serve  
17 customers. And as long as Duke Energy Ohio owns generating assets that are  
18 dedicated to its retail customers, it is important that the Company is able to  
19 recover the costs necessary to operate and maintain those plants, as well as a  
20 reasonable rate of return. This financial stability, in turn, will reduce the  
21 Company's cost of capital, which ultimately lowers the Company's costs of  
22 operation. Indeed, without the degree of earnings stability that the proposed ESP  
23 provides, there is an increased likelihood that investors would demand

1 increasingly higher returns to compensate them for the risks of investing their  
2 capital in a company with very low earnings predictability and with a potential for  
3 low returns. Moreover, developing an ESP that allows Duke Energy Ohio the  
4 opportunity to continue to earn a reasonable rate of return supports the continued  
5 investment in and dedication to Ohio customers of the Company's generating  
6 assets. Duke Energy Ohio witness De May provides testimony on the Company's  
7 overall financial objectives, credit quality, and the impact that Ohio's regulatory  
8 construct could have on investors.

9 To put in context the significance of maintaining Duke Energy Ohio's  
10 financial viability, we need only consider the recent past. Over the last two years,  
11 the Company has experienced significant customer switching. In fact, as  
12 described by Duke Energy Ohio witness Julia S. Janson, as of March 31, 2011,  
13 more than 66 percent of the Company's load had switched to CRES providers.  
14 This unprecedented switching has resulted in the Company no longer earning a  
15 reasonable return. For purposes of illustration, in Duke Energy Ohio's first ESP,  
16 the Commission approved a Stipulation and Recommendation wherein it was  
17 agreed that Duke Energy Ohio would not have significantly excessive earnings in  
18 any year of the ESP where its actual annual return on ending common equity was  
19 less than 15 percent.<sup>8</sup> In 2009, Duke Energy Ohio's annual return on ending  
20 common equity was 9.46 percent, including deferrals.<sup>9</sup> And, in 2010, the annual

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<sup>8</sup> *In the Matter of the Application of Duke Energy Ohio for Approval of an Electric Security Plan*, Case No. 08-920-EL-SSO, *et al.*, Stipulation and Recommendation, at pages 35-36 (Oct. 27, 2008).

<sup>9</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code*, Case No. 10-656-EL-UNC, Opinion and Order, at page 3 (November 22, 2010).

1 return decreased to 7.14 percent, including deferrals,<sup>10</sup> less than half the level of  
2 the benchmark approved by the Commission. Notably, these returns are for all of  
3 Duke Energy Ohio's electric operations – generation, transmission, and  
4 distribution. But the transmission and distribution operations are not affected by  
5 customer switching and, instead, are subject to a regulated return. Thus, the  
6 changes in the overall returns, as reflected in the significantly excessive earnings  
7 test filings, demonstrate a substantial and unsustainable decrease in earnings  
8 contribution from the generation business.

9 Further, the level of customer switching has created an uncertainty in  
10 Duke Energy Ohio's ability to recover the costs of maintaining generation in  
11 Ohio. Although some commodity costs, such as fuel, may be reduced as  
12 customers switch to a competitive supplier, the Company's costs of operating and  
13 maintaining its generation fleet are not. As a consequence, when more customers  
14 switch to CRES providers, the Company's ability to recover its costs from the  
15 remaining non-switched customers deteriorates. Absent Duke Energy Ohio's  
16 ability to recover its costs and a reasonable rate of return, continued ownership of  
17 these generating assets would not be in the Company's best interests.

18 **Q. PLEASE DISCUSS HOW THE PROPOSED ESP AFFECTS THE**  
19 **COMPETITIVE MARKET IN OHIO.**

20 **A.** The proposed plan also enhances the competitive market by making the price for  
21 energy fully competitive. Duke Energy Ohio will implement a competitive

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<sup>10</sup> *In the Matter of the Application of Duke Energy Ohio, Inc., for Administration of the Significantly Excessive Earnings Test under Section 4928.143(F), Revised Code, and Rule 4901:1-35-10, Ohio Administrative Code, Case No. 110-2954-EL-UNC, Direct Testimony of Peggy Laub, at page 15 (May 16, 2011).*

1 bidding process to determine the energy price of its SSO load. This auction-based  
2 process reflects a sustained opportunity for competitive suppliers and marketers.  
3 And customers will continue to have the ability to switch to a CRES provider,  
4 should they desire to do so. Duke Energy Ohio's long-term ESP will also allow  
5 CRES providers to consider developing their own, longer-term plans for  
6 customers, as they will have more certainty regarding Duke Energy Ohio's price-  
7 to-compare.

8 Under Duke Energy Ohio's current three-year structure, CRES providers  
9 likely cannot develop offers that extend beyond the termination date of Duke  
10 Energy Ohio's ESP absent contractual provisions that enable a re-negotiation of  
11 the agreement. In contrast, the proposed ESP will establish a long-term pricing  
12 plan, which should perpetuate the competitive market in Duke Energy Ohio's  
13 service territory. Further, as has previously been noted, the capacity costs are not  
14 competitive for competitive suppliers in PJM and, as such, the capacity charge  
15 should have little or no impact on the competitive process.

16 **Q. YOU HAVE DISCUSSED THE SPECIFIC CREDIT FOR CUSTOMERS**  
17 **RESULTING FROM THE PROFIT SHARING MECHANISM. PLEASE**  
18 **DISCUSS HOW THIS MECHANISM MORE GENERALLY BENEFITS**  
19 **SOUTHWEST OHIO.**

20 **A.** The profit sharing mechanism has multiple goals. The primary goal is to benefit  
21 the customers themselves by lowering the capacity charge that they are required  
22 to pay. Along that line, the Company also receives a portion of the profits,  
23 thereby aligning its interests with those of the customers in maximizing profits.

1        However, the mechanism also benefits the community in southwest Ohio as a  
2        whole. As I have mentioned, Duke Energy Ohio proposes an economic  
3        development program, funded by a portion of the net profits from the Legacy  
4        Generating Assets that would otherwise be shared through the profit sharing  
5        mechanism. This offering is intended to benefit all stakeholders as it is focused on  
6        attracting, retaining, and expanding the business sector in southwest Ohio.

7        **Q. PLEASE EXPLAIN WHY DUKE ENERGY OHIO HAS CHOSEN A**  
8        **TERM FOR ITS ESP THAT IS NOT BASED ON CALENDAR YEARS.**

9        A. The term of the ESP is intended, in part, to align the energy auction terms with  
10        PJM's planning years. The PJM planning years consist of the twelve-month  
11        period of June through May, rather than a typical January through December  
12        calendar year. Duke Energy Ohio anticipates being a member of PJM by January  
13        1, 2012. Therefore, the Company will be at the end of a PJM planning year on  
14        May 31, 2021, and it is thus logical to affix an expiration date for the ESP that  
15        coincides with the end of a PJM planning year.

16        **Q. PLEASE ELABORATE ON THE BENEFITS OF A NINE-YEAR, FIVE-**  
17        **MONTH TERM FOR THE PROPOSED ESP.**

18        A. Stability and certainty are the foundation of this ESP, as well as preservation of a  
19        competitive retail market for energy. As I discussed above, customers will be  
20        protected from capacity market fluctuations, as Duke Energy Ohio will be  
21        supplying capacity at the Company's cost of service, with a reasonable rate of  
22        return and a credit resulting from an allocation of net profits on energy and  
23        ancillary services. Comparing Duke Energy Ohio's proposed capacity rate and

1 energy credit to the forecasted market prices for capacity, it is evident that price  
2 stability and certainty for customers are realized under a longer-term plan. That is,  
3 a short-term (*i.e.*, three-year) plan makes no provision for protecting customers  
4 during the period of time that wholesale capacity prices are expected to be  
5 substantially higher than Duke Energy Ohio's projected price. Consequently, we  
6 are proposing a nine-year, five-month term, such that customers have the  
7 assurance of reasonably stable prices for several years.

8 A longer term also has benefits for the Company, which operates in a  
9 capital-intensive industry. The operation, maintenance, and modernization of  
10 generating facilities often include long lead times. Thus, certainty in respect of  
11 our rate structure over a nearly ten-year period enables the Company to develop  
12 and execute effectively on its business activities for the long term. In an era of  
13 increasing environmental regulations and consequent impending generation  
14 facility closures, this certainty and predictability will be important as the  
15 Company secures the requisite supply of capacity to meet our customers'  
16 demands.

17 The need for longer term certainty and stability is not appreciated by Duke  
18 Energy Ohio alone. Rather, it is likely critical to many of our industrial and  
19 commercial customers, which also operate pursuant to long-term business models  
20 or plans. And the inability of our energy-intensive customers to incorporate some  
21 reasonable level of certainty around electric prices into those models or plans  
22 would undeniably present challenges. The Company's proposed ESP is intended  
23 to reduce, if not entirely eliminate, these challenges by providing customers with

1 the assurance that our rate structure will not change repeatedly in the next several  
2 years, while reserving to these customers the ability to exercise choice regarding  
3 their energy supplier.

4 **Q. YOU HAVE PREVIOUSLY TESTIFIED ABOUT DUKE ENERGY**  
5 **OHIO'S INTENTION TO TRANSFER ITS LEGACY GENERATING**  
6 **ASSETS. DOES THE COMPANY STILL INTEND TO SEEK**  
7 **COMMISSION APPROVAL TO TRANSFER ITS ASSETS?**

8 A. If the Commission approves the ESP, as proposed, and the ESP is not  
9 subsequently terminated during its term, Duke Energy Ohio will not file for  
10 approval to transfer the Legacy Generating Assets prior to May 31, 2021. Rather,  
11 for the duration of the ESP, Duke Energy Ohio's Legacy Generating Assets  
12 would be dedicated to supplying our Ohio customers with capacity, while the  
13 associated energy and ancillary services are sold in the market and the net profits  
14 shared with customers. Thus, unlike the MRO structure, under which a transfer of  
15 the Legacy Generating Assets from the distribution utility would have been  
16 diligently pursued, Duke Energy Ohio will not seek to transfer these assets for the  
17 term of this proposed ESP.

18 **Q. PLEASE ELABORATE ON WHY DUKE ENERGY OHIO IS PROPOSING**  
19 **AN 80 PERCENT/20 PERCENT SHARING OF NET PROFITS UNDER**  
20 **ITS PROFIT SHARING MECHANISM.**

21 A. It is important first to recognize that Duke Energy Ohio is not required, under  
22 R.C. 4928.143, to share any net profits with its customers. But the Company is  
23 proposing recovery, from customers, of the costs associated with maintaining the