

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio)	
Edison Company, The Cleveland)	
Electric Illuminating Company and The)	Case No.: 11-4625-EL-ACP
Toledo Edison Company for Approval)	
of Request for Proposal to Purchase)	
Renewable Energy Credits Through)	
Ten Year Contracts.)	

**APPLICATION FOR APPROVAL OF SECOND REQUEST FOR PROPOSAL TO
PURCHASE RENEWABLE ENERGY CREDITS THROUGH TEN YEAR CONTRACTS**

I. INTRODUCTION

Applicants, Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively, the “Companies” or “Applicants”) hereby request approval to conduct a second Request for Proposal to purchase Renewable Energy Credits (“RECs”) (collectively “Second RFP”) through ten year contracts, pursuant to Section A.11 of the Companies’ Stipulation and Recommendation, as amended by the Supplemental Stipulation, and further amended by the Second Supplemental Stipulation (collectively, the “Stipulation”) approved by the Public Utilities Commission of Ohio (“Commission”) in Docket No. 10-388-EL-SSO.¹ The Stipulation also provides for the timely recovery of all reasonable costs associated with acquiring RECs through the aforementioned ten year contracts, including the costs associated with administering the Second RFP.

The Companies now submit this Application requesting the Commission to: (i) approve the Second RFP process detailed herein and authorize the Companies to seek competitive bids to

¹ *In re Application of [Companies] for Authority to Establish a Standard Service Offer Pursuant to R.C. §4928.143 in the Form of an Electric Security Plan*, Case No. 10-338 (“ESP 2 Case”), Second Supplemental Stipulation, pp. 1-2 (July 22, 2010)

purchase through ten year contracts the annual delivery of 1,000 Ohio solar REC²; (ii) approve the recovery of all reasonable costs associated with acquiring RECs through the Purchase and Sale Agreement for Renewable Energy Credits attached hereto as Appendix A (the "Second RFP Agreement") for the full ten year period (with any additional period necessary for reconciliation), irrespective of the Companies' need for RECs to meet their statutory requirement, and approve recovery of such costs associated with administering the Second RFP; and, (iii) approve that such costs shall be included in Rider AER or such other rider that shall be established to effectuate the recovery of such costs.³

II. HISTORY

The Stipulation required that the Companies file an application for the initial REC RFP process within 90 days after the Commission's opinion and order on the Stipulation. On December 2, 2010, the Companies filed their first application for the REC RFP process ("First RFP Application").⁴ On June 8, 2011, the Commission granted the Companies First RFP Application in part and modified the Companies' First RFP Application and First RFP Agreement as follows:

- (a) In order to clarify the Companies' intended meaning of the phrase "irrespective of the Companies' need for RECs to meet their statutory requirement," on page 2 of the application, the Companies shall file details within 90 days of the date of this Finding and Order describing how they intend to assess their immediate and longer-term need for RECs under the RFP.

² Pursuant to the Stipulation, if the standard service offer load of the Companies is greater than 15,000,000 MWh and less than 27,000,000, a minimum of an annual delivery of an additional 1,000 solar RECs will be purchased that year.

³ Pursuant to Section A.11(b) of the Stipulation, this filing is the second of a possible four RFPs to be conducted for ten year contracts for solar REC delivery beginning in 2011, 2012, 2013 and finally in 2014. Notwithstanding, should the Companies determine prior to entering into contracts for the 2012, 2013 and 2014 RFPs that the Companies do not require those RECs to meet the requirements of R.C. § 4928.64, or that the purchase of those RECs would cause the Companies to exceed the cost cap set forth in R.C. § 4928.64(C)(3), the Companies will not be required to purchase those RECs.

⁴ *In re the Application of the [Companies] for Approval of Request for Proposal to Purchase Renewable Energy Credits Through 10 Year Contracts*, Case No. 10-2891 ("First RFP Case"), Application (December 2, 2010).

- (b) In order to increase flexibility, Section 3.2 of the Purchase and Sale Agreement shall be modified to require the REC supplier to transfer a particular percentage of the output of the facility, or the total output of the facility, up to a contracted amount, rather than requiring quarterly transfer of RECs on a firm basis. For facilities that are not yet in service, REC suppliers may provide a defined quarterly number of RECs for the period until the new facility's in service date and a percentage of the facility's output thereafter.
- (c) Further, the Companies are directed to file their applications for the 2013 and 2014 RFPs to allow sufficient time for the RFPs to take place in advance of the first delivery year in order to allow new facilities to use the resulting contractual commitments to obtain financing.
- (d) In order to allow sufficient time for RECs generated during any given month to be reflected in a GATS account, Section 3.2.1 of the Purchase and Sale Agreement shall be modified to require RECs to be transferred within 45 days following the close of the quarter.
- (e) In order to allow sufficient time for RECs generated during any given month to be reflected in a GATS account, Section 3.2.1 of the Purchase and Sale Agreement shall be modified to include a cure period of 45 days following the end of the reporting year.⁵

On July 8, 2011, the Companies filed an application for rehearing ("AFR") on the Commission's June 8, 2011 Order requesting that the Commission re-visit the second modification outlined in part (b) above and re-instate their original First RFP Application and First RFP Agreement.⁶ Specifically, the Companies asserted that the Commission's Order requiring the Companies to alter the First RFP Agreement to follow the unit-contingent approach and to allow the delivery of RECs to be optional for suppliers until the facility is in service is unlawful and unreasonable in that it is: (i) inconsistent with the Commission-approved ESP-2 Stipulation; and (ii) undermines the Companies' ability to comply with statutory benchmarks for renewable energy resources. In the alternative, the Companies requested that the Commission

⁵ *Id.*, Order, pp. 10-11 (June 8, 2011).

⁶ *Id.*, AFR (July 8, 2011).

expressly allow the Companies to utilize any contracted unit-contingent and optional delivery RECs as described in the Commission's June 8, 2010 Order, for purposes of the Companies' compliance with statutory benchmarks for renewable energy resources set forth in R.C. § 4928.64, regardless of whether the RECs were actually delivered by the REC supplier. The AFR is currently pending with the Commission.

With the exception of part (b) of the Commission's Order above, the Companies have incorporated the modifications to the First RFP Agreement in their Second RFP Agreement. However, as discussed in the Companies' AFR, the Companies have maintained their original provisions related to firm delivery of RECs in the Second RFP Agreement. The Companies firmly believe that to require unit-contingent delivery of RECs would be inconsistent with the Stipulation and significantly harm their ability to meet renewable energy mandates. Therefore, the Companies respectfully request that the Commission grant their Application as written and allow them to require firm delivery of RECs.

II. PROVISIONS IN THE STIPULATION

The Companies file this application for the Second RFP in compliance with the Commission-approved Stipulation in Case No. 10-388-EL-SSO. The Companies' request for approval which is outlined in both the Introduction and Conclusion are narrowly tailored to align with the language set forth in Section A.11 of the Stipulation. First, the Companies are filing this Second RFP Application under the schedule contained in the Stipulation:

The applications for each of the subsequent RFPs shall be filed for Commission approval no later than August 1st of each of 2011, 2012, and 2013. The standard service offer load of the Companies for the purpose of the thresholds set forth above is calculated by multiplying the Companies' prior year non-shopping percentage, as submitted by the Companies to Commission Staff in December of each year, by the Companies' long term forecast as filed with the Commission on April 15 for the year in which an RFP may occur.

Next, the Companies' are requesting authority to hold the Second RFP for 1,000 Ohio solar REC⁷s under the schedule contained in Section A.11(b) of the Stipulation, which provides, in pertinent part, that:

The Companies' three subsequent applications to the PUCO will also provide for three subsequent RFPs to be conducted for ten year contracts for solar REC delivery periods of 2012 through 2021, 2013 through 2022 and finally 2014 through 2023 respectively, conditioned upon the following:

- If the standard service offer load of the Companies is less than 15,000,000 MWh: no additional solar REC⁷s will be purchased that year.
- If the standard service offer load of the Companies is greater than 15,000,000 MWh and less than 27,000,000, a minimum of an annual delivery of an additional 1,000 solar REC⁷s will be purchased that year.
- If the standard service offer load of the Companies is greater than 27,000,000 MWh and less than 35,000,000, a minimum of an annual delivery of an additional 2,000 solar REC⁷s will be purchased that year.
- If the standard service offer load of the Companies is greater than 35,000,000 MWh a minimum of an annual delivery of an additional 3,000 solar REC⁷s will be purchased that year.

Third, the Companies are requesting cost recovery as provided in Section A.11(e) of the Stipulation, which provides, in pertinent part, that:

The applications to the Commission will seek approval for recovery of all reasonable costs associated with acquiring REC⁷s through the aforementioned 10 year contracts consistent with Section A.11(d)⁸ above, including the costs associated with administering the RFP.

For the full period covered by each of the RFPs, such costs shall be recovered each year in which the REC⁷s are delivered (including any period for reconciliation).

⁷ Section A.11(c) of the Stipulation provides that "[a]ny REC⁷s required by this section but not obtained through one of the RFPs described above due to under-subscription (including if such RFPs do not take place) will be carried over to be solicited in the next subsequent RFP. Provided, however, no obligation to conduct an RFP pursuant to this section of the Stipulation will be carried beyond 2014."

⁸ Section A.11(d) of the Stipulation provides in pertinent part that the REC costs shall be recovered in the year in which the REC⁷s are delivered to the Companies and the Companies pay for REC⁷s irrespective of the date the REC⁷s may be retired.

Finally, the Companies' cost recovery can also be found in Section A.11(e) which provides, in pertinent part, that:

Those costs will be recovered through Rider AER or such other rider that shall be established to effectuate the recovery of such costs.

III. RENEWABLE ENERGY COLLABORATIVE

In conjunction with the First RFP Application, and pursuant to and consistent with the Stipulation, the Companies engaged interested Signatory Parties and Non-Opposing Parties (as such terms are defined in the Stipulation) to the Stipulation to assist in the development of a REC RFP to purchase RECs through ten year contracts. The collaborative effort began with the Companies hosting a kick-off meeting at the Commission offices on October 29, 2010. The kick-off meeting set forth the Companies' objectives for the collaborative, introduced a straw-man for the REC RFP process and the ten year REC contract, and provided participants the opportunity to identify issues and propose changes to the Companies' proposed REC RFP process and ten year REC contract. The kick-off meeting was informative and productive and several participants solicited additional information on the straw-man REC RFP process and offered suggested improvements to the straw-man ten year contract. The kick-off meeting was followed by five additional meetings to work through issues and develop a mutually agreed upon REC RFP process and ten year contract. This collaborative process included representatives from Kroger Company ("Kroger", Kroger also provided input on behalf of American Municipal Power), Nucor Steel of Marion, Ohio, Environmental Law and Policy Center ("ELPC", ELPC also provided input on behalf of certain Solar Alliance members, including Community Energy, Standard Energy, and SolarWorld), Northeast Ohio Public Energy Council ("NOPEC", NOPEC also provided input on behalf of American Wind Energy Association), Ohio Partners for Affordable Energy, Ohio Energy Group, Industrial Energy Users-Ohio, Constellation New Energy, Inc. and Constellation Energy

Commodities Group, Inc., Ohio Hospital Association, Council of Smaller Enterprises, Staff of the Commission, and the Companies (collectively, the “Collaborative Participants”). The final meeting was held at the Commission offices on November 22, 2010.

The Second RFP process and Second REC Agreement contained herein reflects a compromise of competing positions to resolve outstanding issues in a fair, just and reasonable manner, and does not necessarily reflect any participant’s position with respect to any terms and condition of the RFP process and/or ten year contract. Indeed, other than the one issue that is on rehearing with the Commission in the First RFP Application case, as discussed above, the Second RFP and Second REC Agreement are virtually identical to the First RFP Process and First REC Agreement, with a few minor changes discussed below. The Second REC Agreement also includes, with one exception, the changes to the First REC Agreement as ordered by the Commission.

IV. REC RFP PROCESS

As indicated in the First RFP Application, the Companies’ proposed REC RFP is designed to ensure financial neutrality to the Companies and adhere to the following four fundamental RFP design criteria: 1) Well Defined Products; 2) Transparent Process; 3) Independent Oversight; and, 4) Fair Bid Evaluation Criteria. The product which is set forth in Section A.11(b) of the Stipulation consists of a ten year contract for the annual delivery of 1,000 Ohio solar RECs. The minimum quantity size will be one REC per year. Based upon the Companies’ experience, and the feedback from the Collaborative Participants, these are well defined products which should be well understood by the bidder participants in the RFP. The Companies will preserve transparency by making the REC RFP process and associated documents (including calendar, frequently asked questions, bidder rules, purchase and sale agreement, REC RFP process/procedure documents and other required forms to participate in the REC RFP) publicly available. These documents will be available on a

website that will be available to all bidders on an equal basis. The bidder rules manual which sets forth the structure and parameters of the REC RFP will be designed by the independent RFP manager and will, among other things, inform all potential suppliers of the following components of the RFP: (i) bidder registration information; (ii) independent RFP manager contact information; (iii) specifications of the bid products and supplier obligations; (iv) the RFP schedule and key dates; (v) general requirements for bidder proposals; (vi) creditworthiness and bid security information; (vii) instructions on how to prepare proposals and how proposals will be evaluated by the independent RFP manager; and, (viii) where to find all other key documents including the Agreement.

The Companies' proposed Second RFP also contains a number of components to establish independent oversight. First, the Companies plan to retain an independent RFP manager to oversee and conduct the Second RFP. Second, the Second RFP will provide a two-part qualification process whereby all bidders' creditworthiness will first be evaluated and then the bid(s) of each bidder that satisfies the credit qualifications bid will be evaluated. Third, the Second RFP will include a communication protocol to help ensure that no bidder receives an unfair advantage. And fourth, the RFP manager will post frequently asked questions on a public website so all bidders can benefit from potentially useful additional information.

Finally, the Second RFP will provide fair bid evaluation criteria which require bidders to meet clear credit and bid submission requirements. The bid evaluation will be set forth in the bidder rules and include an application, qualification review, bid submittal, and selection of winning bids. The least-cost bidder(s) that meet the credit criteria will be selected as winning bidders.

V. TEN YEAR PURCHASE AND SALE AGREEMENT

A key component of the Companies' Second RFP is the Second REC Agreement. The importance of this Agreement was recognized by all participants of the Companies' renewable

energy collaborative and negotiations over the terms and conditions of this Agreement were of principal concern. The Companies provided a straw-man agreement and encouraged parties to provide recommended changes. The Companies received a number of changes and scheduled meetings to discuss the impact to renewable energy suppliers, the Companies, and ultimately to ratepayers. The Companies accepted certain changes that better met the needs of renewable energy suppliers without exposing the Companies (and ultimately ratepayers) to undue financial risk. Such provisions include: 1) a force majeure provision that does not excuse suppliers from performing under the Agreement if their costs increase or RECS can be sold to a market at a higher price; 2) an appropriate credit provision which requires suppliers to have an acceptable credit rating, a guarantor, or post security if their bid exceeds a certain dollar value; and, 3) a change in law provision that enables the Companies to align the amount paid for RECs with the amount the Commission has approved for timely cost recovery. The terms and conditions of the Agreement are attached hereto as Appendix A.

As discussed above, the Second REC Agreement is virtually identical to the First REC Agreement approved by the Commission on July 8, 2011. The only caveat is the one issue on which the Companies requested rehearing in the First RFP Application case, as discussed above. In addition, the Second REC Agreement contains some minor changes such:

- Deleted all references to M-RETS as an acceptable credit registry. The Companies are now all within PJM. PJM GATS is an industry recognized and respected registry and retirement system for the PJM footprint.
- Removed references to "Production Tax Credits". The current RFP is for solar RECs only. Production Tax Credits only apply to wind RECs.
- Accepted the Commission's modification from the July 8, 2011 Order to modify delivery dates from 15 to 45 days after the quarter to allow for the production of credits in the GATS system which is on a 30 day lag from the end of the month plus 15 days for delivery to our GATS account.
- Added the word "notional" in the credit section.

- Modified contact information under the Notice section.
- Fixed a typo on Appendix A.


For ease of review, the Companies have included a red-line version of Appendix A.

VI. CONCLUSION

In the First RFP Application, the Companies have worked with the Collaborative Participants to design a REC RFP process and Agreement which the Companies believe provide a real opportunity to support and encourage the renewable energy market in Ohio. The Second RFP and Second RFP Agreement continue to be a reflection of this collaborative process. Moreover, the Companies' continue to believe that a firm delivery of RECs is necessary for the Companies' to meet the aggressive renewable energy resource mandates.

WHEREFORE, Applicants respectfully request that the Commission: (i) approve the Second RFP pursuant to Section A.11(b) of the Stipulation detailed herein and authorize the Companies to seek competitive bids to purchase through ten year contracts the annual delivery of 1,000 Ohio solar RECs; (ii) approve the recovery of all reasonable costs associated with acquiring RECs through Agreement for the full ten year period (with any additional period necessary for reconciliation), irrespective of the Companies' need for RECs to meet their statutory requirement, and approve recovery of such costs associated with administering the Second RFP; and, (iii) approve that such costs shall be included in Rider AER or such other rider that shall be established to effectuate the recovery of such costs.

Respectfully submitted,



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On behalf of Ohio Edison Company,

The Cleveland Electric Illuminating

Company and The Toledo Edison Company

**FORM OF
PURCHASE AND SALE AGREEMENT
FOR RENEWABLE ENERGY CREDITS**

**FIRSTENERGY SERVICE COMPANY, AS AGENT FOR
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY
OHIO EDISON COMPANY AND THE TOLEDO EDISON COMPANY**

TABLE OF CONTENTS

<u>Article</u>	<u>Subject</u>	<u>Page</u>
ARTICLE 1	DEFINITIONS.....	2
ARTICLE 2	TERM OF AGREEMENT.....	7
ARTICLE 3	DELIVERY, BILLING AND PAYMENT.....	7
ARTICLE 4	TAXES AND FEES.....	10
ARTICLE 5	CREDIT AND SECURITY	10
ARTICLE 6	REPRESENTATIONS AND WARRANTIES.....	12
ARTICLE 7	ASSIGNMENT.....	13
ARTICLE 8	FORCE MAJEURE	14
ARTICLE 9	CHANGE IN LAW.....	14
ARTICLE 10	EVENTS OF DEFAULT	15
ARTICLE 11	REMEDIES UPON DEFAULT	16
ARTICLE 12	INDEMNIFICATION.....	18
ARTICLE 13	CONFIDENTIALITY.....	18
ARTICLE 14	GOVERNING LAW; WAIVER OF TRIAL BY JURY	19
ARTICLE 15	MISCELLANEOUS	19

Appendices

Appendix A	REC Transaction Confirmation
Appendix B	Sample Letter of Credit
Appendix C	Form of Guaranty

PURCHASE AND SALE AGREEMENT FOR RENEWABLE ENERGY CREDITS

This Purchase and Sale Agreement for Renewable Energy Credits, with the effective date provided in Appendix A, is entered into by and between FirstEnergy Service Company, as agent for The Cleveland Electric Illuminating Company, Ohio Edison Company, and The Toledo Edison Company, with a place of business at 76 South Main Street, Akron, Ohio 44308, (hereinafter referred to as "Buyer" or "FirstEnergy Service Company") and REC Supplier as provided in Appendix A (hereinafter referred to as "REC Supplier").

RECITALS

WHEREAS, capitalized terms used in these Recitals that remain undefined shall have the meaning ascribed to them in Article 1;

WHEREAS, this Agreement contemplates the purchase and sale of certain characteristics that arise from the generation of electricity using a renewable energy resource, referred to herein as Renewable Energy Credits ("RECs");

WHEREAS, said RECs shall be registered with GATS or ~~M-RETS~~ and originate from a renewable energy resource generating facility located in the State of Ohio or which constitutes an in-state facility pursuant to the Act that is, or will be certified by the Public Utilities Commission of Ohio ("PUCO") or other applicable certifying entity, for purposes of complying with the renewable energy resource requirements of R.C. 4928.01, R.C. 4928.64, and R.C. 4928.65; and said facility must retain such certification during the term of this Agreement;

WHEREAS, REC Supplier has the RECs Reporting Rights and the marketing rights to the Environmental Attributes of certain renewable energy resources;

WHEREAS, Buyer has agreed to purchase RECs from REC Supplier and REC Supplier has agreed to sell to Buyer RECs, in accordance with the provisions of this Agreement;

WHEREAS, the Parties have set forth in this Agreement the terms and conditions for the REC Supplier to provide RECs;

NOW, THEREFORE, for and in consideration of the premises, the mutual promises and agreements set forth herein and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Buyer and REC Supplier, each intending to be legally bound, agree as follows:

ARTICLE 1 DEFINITIONS

1.1 **Definitions.** As used in this Agreement, the following terms have the respective meanings set forth below. Other capitalized terms not set forth in this section are defined elsewhere in this Agreement or have the meaning ascribed to them by the Act.

Act means the renewable energy resource requirements of R.C. 4928.01, R.C. 4928.64, and R.C. 4928.65;

Affiliated REC Agreement means an agreement substantially in the form of this Agreement between REC Supplier and Buyer for the purchase and sale of RECs.

Agreement means this Purchase and Sale Agreement for Renewable Energy Credits, including all provisions, exhibits, appendices, and documents incorporated herein by reference.

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. § 1101 et seq.

Business Day means any day on which commercial banks are not authorized or required to close in New York, New York and any day on which payments can be effected on the Fedwire system. A Business Day shall open or begin at 8:00 a.m. and shall close or end at 5:00 p.m. Eastern Prevailing Time.

Commodities Exchange Act means the Commodities Exchange Act as amended and codified at 7 U.S.C. § 1 et seq.

Confidential Information means all oral and written information exchanged between the Parties which is not otherwise available to the public with respect to the subject matter of this Agreement except (a) information that is or becomes available to the public; (b) information that was already known by either Party on a non-confidential basis prior to this Agreement; and (c) information that becomes available to either Party on a non-confidential basis from a source other than the other Party if such source was not subject to any prohibition against disclosing the information to such Party.

Delivery Date means the date on which GATS ~~or M-RETS~~ issues a written, facsimile or electronic confirmation to Buyer and REC Supplier of the REC Supplier's transfer order directing a transfer of RECs to Buyer's GATS ~~or M-RETS~~ account.

Effective Date means the date set forth in Appendix A as the effective date.

Environmental Attributes means any and all credits, benefits, emissions reductions, environmental air quality credits, and emissions reduction credits, offsets, and allowances,

howsoever entitled, resulting from the avoidance of the emission of any gas, chemical, or other substance attributable to the generation of electricity by the Renewable Energy Resource.

Event of Default has the meaning set forth in Section 10.1 hereof.

Force Majeure means an event not anticipated as of the Effective Date, which is not within the reasonable control of the Party affected thereby or attributable to such Party's fault or negligence, and which by the exercise of due diligence the affected Party is unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore. Force Majeure includes, but is not limited to: acts of God, civil disturbance, sabotage, action or restraint by court order or public or government authority, so long as the affected Party has not applied for, or assisted in, the application for, and has opposed, where and to the extent reasonable, such government action. Force Majeure shall not include a) the REC Supplier's ability to sell RECs to a market at a more advantageous price, b) performance failure on the part of one or more Renewable Energy Resource generating facilities, which may be relied upon by the REC Supplier in order to generate RECs for sale and delivery hereunder or otherwise except to the extent that such insufficiency is itself due to the event of Force Majeure, c) increased cost of performance by REC Supplier (including the reduction or elimination of Project Benefits associated with the production of RECs by any Renewable Energy Resource generating facility), d) changes in the requirements of any Governmental Authority, including registration requirements for RECs; or e) other occurrences to the degree not also constituting a *force majeure* under the Act; *provided, however, that*, a determination of *force majeure* under the Act shall not, in and of itself, alone, constitute an event of Force Majeure under this Agreement.

Forward Contract has the meaning ascribed to such term in Section 101(25) of the Bankruptcy Code.

Forward Contract Merchant has the meaning ascribed to such term in Section 101(26) of the Bankruptcy Code.

GATS means the environmental registry and information system administered by PJM Environmental Information Services, Inc. or any successor REC registry designated by the PUCO.

Governmental Authority means any federal, state or local government, court of competent jurisdiction, administrative agency or commission or other governmental or regulatory authority or instrumentality or authorized arbitral body.

Interest Index means the average Federal Funds Effective Rate for the period of time that funds are held on deposit by Buyer under Section 5.1.6 hereof. The Federal Funds Effective Rate is published daily on the Federal Reserve website (<http://www.federalreserve.gov/releases/h15/update/>).

Interest Rate means a per annum rate of interest equal to two (2%) percent over the prime lending rate as published from time to time in the Wall Street Journal under "Money Rates" on the date on which any payment or delivery obligation is due (or if not published on such day on the most recent preceding day on which it is published), but in no event to exceed the maximum lawful rate.

Lien means any mortgage, deed of trust, lien, pledge, charge, claim, security interest, easement, covenant, right of way, restriction, equity, hypothecation, usufruct or encumbrance of any nature whatsoever, including any conditional sale agreement.

Market Price means the REC Price determined based on the average of prices quoted by three (3) reputable, independent third party leading market dealers, which are regularly engaged in the buying and selling of RECs.

Minimum Credit Rating means a REC Supplier's or REC Supplier's Guarantor minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) of at least "BB+" from Standard & Poor's Rating Services ("S&P"), "Ba1" from Moody's Investors Service, Inc. ("Moody's") or "BB+" from Fitch, Inc. If the REC Supplier or REC Supplier's Guarantor has only two ratings, and the ratings are split, the higher rating will be used. If the REC Supplier or REC Supplier's Guarantor has all three ratings, 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. If the REC Supplier or REC Supplier's Guarantor is not rated, then the REC Supplier or REC Supplier's Guarantor may submit three years of audited balance sheet, income and cash flow statements, and associated financial notes to the Buyer for review.

~~**M-RETS** means the environmental registry and information system administered by APX or any successor REC registry designated by the PUCO.~~

Party or Parties means Buyer or REC Supplier, individually or collectively, as applicable.

PJM means the PJM Interconnection, a regional transmission organization that coordinates the movement of wholesale electricity in all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and the District of Columbia.

~~—— **Production Tax Credits or PTCs** mean the federal production tax credit for the production of electricity from wind pursuant to 26 U.S.C. § 45 or any substantially similar successor provision.~~

~~**Project Benefits** means Production Tax Credits, investment tax credits, or other direct, third-party federal, state or local subsidies, incentives, grants, credits, rebates or funding for the purchase, ownership, construction or operation of a Renewable Energy Resource generating facility, or the generation of electricity or production of RECs by a Renewable Energy Resource generating facility.~~

Public Utilities Commission of Ohio or PUCO means the Public Utilities Commission of Ohio which is the governing body responsible for certifying eligible Ohio Renewable Energy Resource generating facilities.

REC Price means the price for each REC in \$/REC, as specified in Appendix A.

REC Quantity means the quantity of RECs purchased by Buyer under this Agreement, as set forth in Appendix A.

REC Quantity per Quarter means with respect to a Reporting Year one quarter (1/4) of the REC Quantity or such other quantity as may be established and specified on Appendix A.

REC Reporting Rights means the right to report to any agency, authority or other party, including without limitation under Section 1605(b) of the Energy Policy Act of 1992, as may be amended, ownership of the Environmental Attributes associated with the REC.

REC Supplier's Account means the REC Supplier's financial institution account specified in Appendix A.

REC Supplier's Guarantor means any person having the authority and agreeing to guarantee a REC Supplier's financial obligations under this Agreement, provided that such person meets the Buyers' Minimum Credit Rating requirements, assessment for creditworthiness, or posts adequate credit security.

REC Supplier Security means the acceptable credit support to be provided by REC Supplier pursuant to Article 5.

Renewable Energy Credit or REC means all rights, title and interest in and to the Environmental Attributes associated with the electricity generated from a Renewable Energy Resource facility located in the State of Ohio or which constitutes an in-state facility pursuant to the Act, including the REC Reporting Rights. RECs delivered under this Agreement must originate from a Renewable Energy Resource generating facility certified by the PUCO and be registered with GATS ~~or M-RETS~~. One REC represents the Environmental Attributes made available by the generation of one megawatt-hour "MWh" (equivalent to 1000 kilowatt-hours) of electricity from one or more Renewable Energy Resources, except for biomass, in which case the RECs shall be calculated according to the rules and regulations developed and in effect by the PUCO. For purposes of this Agreement, RECs shall include "Solar Renewable Energy Credits" or "SRECs" unless otherwise specified. RECs that were produced by a certified, eligible Renewable Energy Resource after July 31, 2008 but before the start of the applicable Term and have been banked and are approved by the PUCO are acceptable for delivery to Buyer provided such RECs comply with the requirements of this Agreement.

Renewable Energy Resource means an electric power generator producing electric power from renewable energy sources that meet the requirements defined in R.C. 4928.01(A)(35).

Replacement Price means the (i) the price at which Buyer purchases substitute RECs to make up for any deficiency in the amount of RECs REC Supplier failed to deliver, or if Buyer does not purchase substitute RECs, (ii) any compliance payment the Buyer is ordered to pay by the PUCO or other applicable governing body.

Reporting Year means the twelve month period beginning January 1, through December 31 of the applicable year in which Buyer must report compliance with the Act.

Retire or Retirement means the REC Supplier shall cause the RECs purchased by Buyer from REC Supplier to be immediately and permanently removed, upon purchase, from all applicable markets by REC Supplier on Buyer's behalf and such RECs shall not be resold, transferred or otherwise utilized by REC Supplier or any other party for any purpose whatsoever.

Sales Price means the (i) the price at which REC Supplier resells the RECs, which Buyer has failed to accept or, if REC Supplier does not resell the RECs, (ii) the REC Price for such quantity of RECs that Buyer fails to accept.

Taxes means but is not limited to, any or all ad valorem, property, occupation, severance, first use, conservation, gross receipts, privilege, sales, use, consumption, excise, lease, transaction, and other taxes, governmental charges, licenses, fees, permits and assessments, or increases therein, other than taxes based on net income or net worth. A tax is not a penalty or a fine.

Term has the meaning set forth in Section 2.1 hereof.

1.2 Construction. Unless otherwise indicated (a) defined terms include the plural as well as the singular; (b) any agreement defined or referred to herein includes each amendment, modification and supplement thereto and waiver, approval and consent in respect thereof as may become effective from time to time and includes references to all appendices, exhibits, schedules and other attachments thereto and instruments, agreements or other documents incorporated therein; (c) any term defined by reference to any instrument, agreement or other document has such meaning set forth in such document as of the date hereof and such meaning shall remain in effect whether or not such document is subsequently amended, modified or terminated; (d) a reference to any law or regulations includes any amendment, modification or successor thereto; (e) a reference to any person includes its permitted successors and assigns and any entity and its permitted successors and assigns; (f) all references to appendices, sections, schedules and exhibits shall mean and refer to the respective appendices, sections, schedules and exhibits in or attached to the agreement or document in which such reference appears; (g) the words "include," "includes" and "including" are not limiting and shall be deemed to be followed by the words "without limitation" whether or not in fact followed by such words or words of like import; (h) the terms "hereof," "herein," "hereunder" and comparable terms refer to this entire Agreement with respect to which such terms are used and not to any particular article, section or subdivision hereof; and (i) references to "termination of this Agreement," "this Agreement is terminated," "this Agreement may be terminated" and similar expressions used in this Agreement refer to the termination of deliveries under this Agreement and related on-going rights and obligations, and does not imply or mean a termination of rights, remedies, obligations and provisions, which by their nature, or as provided elsewhere in this Agreement, survive termination.

ARTICLE 2

TERM OF AGREEMENT

2.1 Term. The term of this Agreement shall be for ten (10) years (the "Term") commencing on [INSERT DATE] and shall, unless earlier terminated, remain in effect through [INSERT DATE] (the "Termination Date").

2.2 Early Termination. This Agreement may be terminated prior to the Termination Date as provided in, and with such notice as required by, Article 9, Sections 9.1 and as follows:

- 2.2.1** At any time by the mutual consent of the Parties;
- 2.2.2** As provided in, and with such notice as required by, Article 11, by the Non-Defaulting Party if an Event of Default occurs;
- 2.2.3** By either Party in the case of a Force Majeure event where the Party claiming Force Majeure fails to perform its obligations under this Agreement on account of such Force Majeure event for a period exceeding 180 calendar days after the occurrence of such Force Majeure event, and upon 30 Business Days written notice from the non-claiming Party, unless extended by mutual agreement of the Parties in writing for not more than another 180 calendar days and provided that the claiming party has been and continues to exercise due diligence to remedy the Force Majeure event prior to and after such extension, if any.

2.3 Impact of Termination on Accrued Obligations. Termination of this Agreement for any reason shall not relieve the Parties of any obligation accrued or accruing prior to such termination.

ARTICLE 3 DELIVERY, BILLING AND PAYMENT

3.1 Purchase and Sale of RECs. Subject to the terms and conditions of this Agreement, during each Reporting Year during the Term, REC Supplier shall sell, and Buyer shall purchase, all rights, title and interest in the RECs up to the REC Quantity specified in Appendix A. Unless otherwise agreed by the Parties, Buyer shall not be obligated to purchase, or to accept delivery, of any RECs in excess of either the REC Quantity per Reporting Year or the REC Quantity per Quarter for any quarter.

3.2 Delivery of RECs by REC Supplier. During the Term of this Agreement, REC Supplier shall deliver RECs to Buyer as follows:

- 3.2.1** For each quarter during the Term, not later than ~~45~~45 Business Days following the close of each such quarter, REC Supplier shall issue a transfer order for the transfer of RECs to Buyer's GATS ~~or M-RETS~~-account in an amount equal to the REC Quantity per Quarter. In the event GATS ~~or M-RETS~~ is unable to transfer the RECs on the date as directed by REC Supplier in the transfer order and/or GATS ~~or M-RETS~~ does not issue a written, facsimile or electronic confirmation to Buyer and REC Supplier within 5 Business Days, the Delivery Date shall instead be that date upon which the transfer is complete and confirmed by the Buyer provided that the new Delivery Date shall be no later than the last date on which the Buyer may receive RECs and still utilize such RECs for compliance with the Act in the Reporting Year.
- 3.2.2** Within 5 Business Days following the Delivery Date, Buyer shall confirm the transfer order in the applicable GATS ~~or M-RETS~~-account.

- 3.2.3 Within 30 Business Days of the Delivery Date, REC Supplier shall issue an invoice to Buyer for the amount of RECs delivered during the preceding quarter. Such invoice shall state the quantity of RECs delivered to Buyer during the preceding quarter and the amount owed by Buyer as calculated using the REC Price. Such invoice shall also reflect any interest owed by Buyer to REC Supplier, if any, as well as any credits owing for any reason from REC Supplier to Buyer, if any. In the event REC Supplier is a party to any Affiliated REC Agreement, REC Supplier shall issue a single invoice to Buyer with the quantity delivered and amounts due under this Agreement and each Affiliated REC Agreement.
- 3.2.4 Within 30 Business Days of the Buyer's receipt of the REC Supplier's invoice, Buyer shall, unless disputed, pay the amount set forth in REC Supplier's invoice for the delivered RECs under this Agreement owed by Buyer for such quarter by wire transfer of immediately available United States dollars to REC Supplier's Account:
- 3.2.5 Amounts not paid when due shall accrue interest from the due date to the date of payment at the Interest Rate.
- 3.2.6 In the event of a dispute regarding the amount to be paid, Buyer shall pay the undisputed portion of the REC Supplier's invoice, and, with respect to the disputed portion, shall inform REC Supplier at the time of such payment of the reasons for withholding the disputed amount. Interest, at the Interest Rate shall be paid on disputed amounts ultimately determined to be owed (whether from Buyer to REC Supplier or REC Supplier to Buyer) calculated from the due date to the date of payment or from the date of payment to the date of refund, as the case may be.

3.3 **Failure to Deliver or Accept RECs.** During the Term of this Agreement, to the extent:

- 3.3.1 REC Supplier fails to deliver RECs up to the REC Quantity specified in Appendix A, within ~~10-45~~ Business Days following the end of any Reporting Year during the Term, REC Supplier shall provide RECs sufficient to cure the deficiency for such Reporting Year within 5 calendar days; provided, however, that if REC Supplier does not so provide, Buyer may obtain substitute RECs at Market Price and shall invoice REC Supplier for the total amount paid. REC Supplier shall also pay Buyer for any additional amounts that may be imposed on Buyer by the PUCO or applicable governing body as a result of REC Supplier's failure to deliver to Buyer the REC Quantity during the Reporting Year. REC Supplier shall pay such amounts within 30 calendar days of the date of such invoice.
- 3.3.2 Buyer fails to accept delivery of RECs up to the REC Quantity per Quarter, and has not cured such failure within 10 Business Days after the Delivery Date, upon 5 calendar days written notice following such failure to cure, REC Supplier shall have the right to sell the unaccepted RECs and to invoice Buyer for the positive

difference between the REC Price and the Sales Price, which Buyer shall pay within 30 calendar days of the date of such invoice.

3.4 GATS and M-RETS Responsibilities. REC Supplier and Buyer are each responsible for their own costs associated with establishing and administering any accounts with GATS or M-RETS sufficient to accomplish the delivery of the RECs hereunder during the Term.

3.5 Risk of Loss, Title and Ownership.

3.5.1 Subject to Section 3.6 below, (a) prior to, and through the Delivery Date, REC Supplier shall bear any and all risk of loss with respect to the RECs, and (b) after the Delivery Date, Buyer shall assume and bear any and all risk of loss with respect to the RECs.

3.5.2 Title to the RECs shall transfer from REC Supplier to Buyer as of the Delivery Date for each quarter, and all RECs transferred to Buyer by REC Supplier on the Delivery Date shall be:

(a) free and clear of all Liens and Buyer shall have sole, exclusive and perpetual ownership of all RECs delivered to Buyer by REC Supplier under this Agreement, including all rights to sell, assign, transfer, apply or retire any REC transferred to Buyer by REC Supplier;

(b) only valid RECs, which have not been previously retired, claimed or used to satisfy any renewable energy requirements, obligations or voluntary undertaking by any entity in any jurisdiction.

3.5.3 After the Delivery Date, Buyer shall be solely entitled to any benefits that may thereafter arise from the RECs.

3.5.4 REC Supplier agrees to execute all other documents or instruments, at its expense, necessary to effectuate the delivery of the RECs to Buyer or as may be reasonably requested by Buyer.

3.6 REC Compliance Status. Each REC delivered by REC Supplier hereunder shall be capable as of the Delivery Date to be used by Buyer for purposes of compliance with the Act. If any REC delivered to Buyer is later determined to have been, as of the Delivery Date, unable to be used by Buyer for compliance with the Act for any reason, including, but not limited to, REC Supplier's failure, whether by act or omission to act, under, or with respect to, this Agreement, REC Supplier shall deliver to Buyer an equivalent REC, which is capable to be used by Buyer for purposes of compliance with the Act. REC Supplier shall be responsible to reimburse Buyer for any costs or penalties incurred by Buyer with respect to any REC delivered hereunder, which Buyer is unable to use for compliance with the Act as of the Delivery Date.

3.7 Energy and Capacity Not Included. This Agreement does not include the purchase of, and Buyer shall not purchase, or have any responsibility for the costs of, any energy or capacity from REC Supplier whatsoever, including any energy or capacity from any Renewable Energy Resource generating facility from which REC Supplier obtains any REC for delivery to Buyer

hereunder. Buyer shall not be responsible for any costs, including construction, financing, operating or maintenance costs associated with the Renewable Energy Resource generating facilities or with REC Supplier's procurement of RECs.

ARTICLE 4 TAXES AND FEES

4.1 Taxes, Fees and Expenses.

- 4.1.1** REC Supplier shall pay any and all Taxes, costs, fees, and expenses, including any and all Taxes and transaction costs, fees and expenses attributable to or arising from the sale of the RECs under this Agreement and in order to (a) obtain certification or verification of the RECs, including any inspections of any Renewable Energy Resource generating facility in connection therewith, and (b) provide for the filing and recording of any instrument delivered by REC Supplier to convey the RECs to Buyer.
- 4.1.2** Buyer shall pay any and all Taxes, costs, fees and expenses incurred in connection with the transfers of RECs after the Delivery Date, including with respect to any subsequent sale of the RECs acquired from REC Supplier hereunder.
- 4.1.3** Nothing herein shall obligate or cause a Party to pay or be liable to pay any Taxes for which it is exempt under the law and for which it timely asserts and diligently pursues such exemption, until final determination thereof.

ARTICLE 5 CREDIT AND SECURITY

5.1 Credit and Security.

- 5.1.1** No security is required if the total dollar value of this Agreement is less than \$250,000, or if Buyer determines that REC Supplier or REC Supplier's guarantor has a credit rating or creditworthiness sufficient to provide the credit required to support this Agreement. If REC Supplier or REC Supplier's Guarantor is not rated, Buyer will perform a creditworthiness assessment to determine if the REC Supplier or REC Supplier's Guarantor will be required to post credit security.
- 5.1.2** If the total dollar value of this Agreement is in excess of \$250,000 and the REC Supplier is relying on a guarantor to meet the Minimum Credit Rating requirements, the REC Supplier must provide the Buyer a form of Guaranty in an amount of 5% of the total notional dollar value of the Agreement from the REC Supplier's Guarantor. The Guaranty must be in the form of Appendix C, or another substantially similar form approved by Buyer.
- 5.1.3** If Buyer has determined that REC Supplier or REC Supplier's Guarantor does not meet the Minimum Credit Rating requirements and does not have a creditworthiness sufficient to provide the credit required to support the credit required for this Agreement, then REC Supplier shall post and maintain REC

Supplier Security in an amount of 5% of the total notional dollar value of the Agreement. REC Supplier shall post such security in the form of a Letter of Credit in a form acceptable to the Buyer or in cash. The Letter of Credit must be in the form of Appendix B, or another substantially similar form approved by Buyer. REC Supplier shall have the right to replace such REC Supplier Security with a different REC Supplier Security in the required amount subject to the REC Supplier providing prior notification to Buyer describing such replacement and confirming that the replacement conforms to the requirements of this Agreement. Notwithstanding, if REC Supplier has delivered the REC Quantity per Quarter for each quarter of a Reporting Year, at the end of such Reporting Year, Buyer shall credit REC Supplier one-tenth (1/10) of the total amount of the performance security payment provided to Buyer as collateral.

- 5.1.4 If Buyer relies upon REC Supplier's credit rating to allow REC Supplier to avoid posting security, REC Supplier shall notify Buyer of any and all credit downgrades. If REC Supplier's credit rating subsequently fails to satisfy the Minimum Credit Rating requirements, Buyer shall have the right to request performance assurances or to require posting of credit. REC Supplier shall have the obligation, in such case, to meet Buyer's performance assurances or alternatively post and maintain REC Supplier Security in an amount of 5% of the total notional dollar value of this Agreement.
- 5.1.5 Within 3 Business Days after a draw by Buyer on REC Supplier Security, REC Supplier shall cause the REC Supplier Security to be reinstated to the applicable amount, provided, that the obligation to reinstate (a) the REC Supplier Security shall terminate on the date that the security is provided, and (b) Buyer shall terminate any Letter of Credit or return any cash upon the termination of this Agreement.
- 5.1.6 Buyer shall pay simple interest calculated at the lower of the Interest Index or six (6) percent per annum on all cash held by Buyer pursuant to this Agreement. Each month, the Buyer shall prepare a statement of interest amounts due to the REC Supplier. The statement shall be sent to the REC Supplier within three (3) Business Days after the end of the month via overnight mail or other expeditious means in order for the REC Supplier to include such amount in its invoice.

ARTICLE 6 REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of Both Parties. As of the Effective Date, each Party hereby represents and warrants to the other Party that:

- 6.1.1 It is duly organized or formed, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct its business in all jurisdictions necessary to perform its obligations hereunder;

- 6.1.2 The execution, delivery and performance of this Agreement are within its powers, have been duly authorized by all necessary action and do not violate any of the terms or conditions in its governing documents, any agreement to which it is a party or by which it or any of its property is bound, or provisions of law applicable to it;
- 6.1.3 Except as set forth in and as required by this Agreement, no consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority is required by such Party in connection with the execution, delivery or performance of this Agreement;
- 6.1.4 This Agreement constitutes its legal, valid and binding obligation, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, to the discretion of the court before which proceedings to obtain same may be pending;
- 6.1.5 No Event of Default has occurred and there are no bankruptcy, insolvency, reorganization, receivership or other arrangement proceedings pending or being contemplated by it, or to its knowledge threatened against it;
- 6.1.6 To such Party's knowledge, there are no actions, proceedings, judgments, rulings or orders, issued by or pending before any Governmental Authority, that would materially adversely affect its ability to perform its obligations under this Agreement;
- 6.1.7 It is, and will continue to be for the Term, a Forward Contract Merchant both generally and with respect to the RECs delivered and purchased under this Agreement;
- 6.1.8 It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

6.2 Forward Contract. The Parties acknowledge that this Agreement is a Forward Contract and the Parties are Forward Contract Merchants, both generally and with respect to the deliveries of the RECs pursuant to this Agreement, that each party is an "eligible contract participant" as set forth in the Commodities Exchange Act; and, accordingly, the Parties are entitled to the protections of the provisions of the Bankruptcy Code with respect to the rights or remedies afforded to non-bankrupt Forward Contract Merchants under Forward Contracts with bankrupt counter-parties. The Parties therefore agree that this Agreement may be terminated and the remedies hereunder exercised by either Party in accordance with Article 2 and Article 11 hereof upon the commencement of a proceeding by the other Party under any chapter of the

Bankruptcy Code, and that the automatic stay of Section 362(a) of the Bankruptcy Code shall not apply to such termination.

6.3 Representations and Warranties of REC Supplier. On the Effective Date and as of each Delivery Date, REC Supplier hereby represents and warrants to Buyer that:

- 6.3.1** it has entered into this Agreement in connection with the conduct of its business and it has the capacity or ability to make or take delivery of all RECs referred to in the Agreement to which it is a Party, and it is a producer, processor, commercial user or merchant handling the RECs, and it is entering into such Agreement for purposes related to its business as such;
- 6.3.2** the RECs sold hereunder meets the definition of an Renewable Energy Credit corresponding to the production of renewable energy as set forth in the Act;
- 6.3.3** it has the right and/or title to sell the RECs, which has never been sold, retired, claimed for any other purpose or use, including as part of satisfying compliance with any alternative or renewable energy resource requirements by any person or entity under the Act or in other states, and such transfer and sale to the Buyer is not in violation of any applicable law at the time of such transfer and sale, and the RECs are free and clear of all Liens or other encumbrances.

ARTICLE 7 ASSIGNMENT

7.1 Assignment/Delegation. Neither Buyer nor REC Supplier shall assign this Agreement nor delegate any of its duties hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; otherwise any such assignment or delegation shall be voidable at the option of the other Party. Notwithstanding the foregoing, either Party may, without the prior consent of the other Party, (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 (and without relieving itself from liability hereunder), (ii) transfer or assign this Agreement to an affiliate of such Party which affiliate's creditworthiness is equal to or higher than that of such Party, or (iii) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets of such Party; provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof, including the requirements for creditworthiness and security under Article 5 hereof, and that the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.

7.2 Financing Cooperation. Buyer agrees, at REC Supplier's sole cost and expense, to (i) cooperate with REC Supplier in responding to or complying with the reasonable requirements or reasonable requests of any Financing Party with respect to information regarding the obligations of Buyer hereunder; (ii) provide reasonable assistance to REC Supplier in complying with the reporting requirements set forth in any financing agreements of a Financing Party; and (iii) at any time, and from time to time, during the Term, after receipt of a written request by REC Supplier, execute and deliver to REC Supplier and/or any Financing Party, such estoppel

statements (certifying, to the extent true and correct, among other things that (1) this Agreement is in full force and effect, (2) no modifications have been made, (3) no disputes or defaults exist, (4) no events have occurred that would, with the giving of notice or the passage of time, constitute a default under this Agreement, and (5) all amounts then due and owing have been paid) or consents to assignments of this Agreement by REC Supplier as collateral security as may reasonably be required. "Financing Party" means any lenders or other third parties providing construction financing, long-term financing or other credit support in connection with this Agreement.

ARTICLE 8 FORCE MAJEURE

8.1 Force Majeure. If either Party is rendered unable by an event of Force Majeure to carry out, in whole or in part, its obligations under this Agreement, then, during the pendency of such event of Force Majeure, but for no longer period, the obligations of the affected Party (other than the obligation to make payments hereunder when due) shall, subject to Section 2.2.3 hereof, be suspended to the extent required.

8.1.1 The affected Party shall (i) give the other Party written notice within 48 hours of the commencement of the event of Force Majeure, with details to be supplied within three 3 Business Days after the commencement of the event of Force Majeure further describing the particulars of the occurrence of the Force Majeure, and (ii) take all reasonable steps to remedy the cause of the Force Majeure with all reasonable dispatch.

8.1.2 Whenever either Party is required to commence or complete any action within a specified period, such period shall be extended by an amount equal to the duration of any event of Force Majeure occurring or continuing during such period; provided, however, that, subject to Section 2.2.3 hereof, in no event will any event of Force Majeure extend this Agreement beyond its Term.

ARTICLE 9 CHANGE IN LAW

9.1 Change in Law. Buyer's obligations under this Agreement are contingent on, and limited by the Buyer's ability to recover all costs incurred by it under this Agreement from its retail customers in full and on a current basis. In the event any finding and order of the PUCO has the effect of suspending, limiting, or denying Buyer's ability to recover fully such costs from its retail customers on a current basis, Buyer may continue performing under the Agreement and pay the REC Supplier only the costs for, and associated with, the RECs which the Buyer is permitted to recover on a current basis from its retail customers. However, if Buyer reduces its payments under this Agreement to that which it is permitted to recover on a current basis from its retail customers as a result of an action of the PUCO, REC Supplier may terminate this Agreement upon not less than 30 calendar days notice.

ARTICLE 10 EVENTS OF DEFAULT

10.1 Events of Default. An “Event of Default” by a Party (the “Defaulting Party”) shall mean:

10.1.1 Unless otherwise excused or permitted under the terms of this Agreement, a Party’s failure to make, when due, any payment required pursuant to this Agreement, regardless of whether a payment or portion thereof may be subject to a billing dispute, shall constitute an Event of Default unless a Party shall have cured the same within 3 Business Days after receipt of written notice of such payment failure from the other Party; provided, however, that in the event of a billing dispute, the failure to pay the undisputed portion of such payment when due shall not constitute an Event of Default so long as the Parties are engaged in good faith efforts to resolve such dispute under Section 3.2.6 hereunder.

10.1.2 REC Supplier’s failure to meet the Minimum Credit Rating or to comply with the security requirements set forth in Article 5 within the time frames set forth in this Agreement;

10.1.3 Unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default unless a Party shall have cured the same within 30 calendar days after receipt of written notice of the occurrence of such event from the other Party:

- (a) Any representation, warranty or covenant made by such Party herein is proven to be false or misleading in any material respect at the time it was made;
- (b) A Party transfers or assigns or otherwise conveys any of its rights or obligations under this Agreement to another entity without the other Party’s prior written consent, to the extent such consent is required under this Agreement, or if at the time of such transfer, assignment or conveyance, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement by operation of law or pursuant to an agreement reasonably satisfactory to the other Party;
- (c) A Party’s unexcused failure to perform any other material covenant or obligation set forth in this Agreement that is not enumerated in this Section 10.1.3; or
- (d) A Party is the subject of a voluntary bankruptcy, insolvency or similar proceeding;
- (e) A Party applies for, seeks consent to, or acquiesces in the appointment of a receiver, custodian, trustee, liquidator or similar official to manage all or a substantial portion of its assets;

- (f) A Party is the subject of an involuntary bankruptcy or similar proceeding, and fails to have such proceeding dismissed within 60 calendar days; or
- (g) A Party commits an act or makes an omission that constitutes an "Event of Default" under any Affiliated REC Agreement between Buyer and the REC Supplier for the provision of RECs.

10.1.4 With respect to REC Supplier, unless otherwise excused or permitted under the terms of this Agreement, any of the following events shall constitute an Event of Default, without notice or the opportunity to cure, if the REC Supplier:

- (a) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
- (b) makes an assignment for the benefit of its creditors;
- (c) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets; or
- (d) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger).

10.1.5 **Integrated Transaction.** To the extent that Section 365 of the Bankruptcy Code applies to this Agreement, the Parties agree that all transactions under this Agreement constitute one integrated transaction that can only be assumed or rejected in its entirety.

ARTICLE 11 REMEDIES UPON DEFAULT

11.1 **Remedies For Default.** Upon and during the continuation of an Event of Default, the Non-Defaulting Party shall be entitled to elect or pursue one or more of the following remedies:

- 11.1.1** terminate the Agreement by providing written notice to the Defaulting Party of an Early Termination, as provided in Section 2.2 hereof;
- 11.1.2** accelerate all amounts then owing by the Defaulting Party to the Non-Defaulting Party;
- 11.1.3** withhold any payments due to the Defaulting Party under this Agreement;
- 11.1.4** suspend its performance under this Agreement; and
- 11.1.5** pursue any other remedies available at law or in equity, except to the extent such remedies are expressly limited by this Agreement.

11.2 Calculation of Damages. Notwithstanding the foregoing,

- (a) in the event of termination by REC Supplier for Buyer's default, in addition to amounts owed for RECs delivered prior to such termination, REC Supplier shall be entitled, as liquidated damages (and not as a penalty), and, provided that such amount is paid by Buyer within 30 calendar days of REC Supplier's notice of such termination, as its exclusive remedy for Buyer's default hereunder, to receive cover from Buyer equal to (i) the positive difference, if any, in price (i.e., REC Price less Sales Price) multiplied by the quantity of RECs not delivered due to the termination of the Agreement for the remaining Term of this Agreement, and (ii) actual, reasonable and verifiable third party fees, including broker fees and legal fees and expenses incurred by REC Supplier in the enforcement and protection of its rights under this Agreement;
- (b) in the event of termination by Buyer for REC Supplier's default, Buyer shall be entitled, as liquidated damages (and not as a penalty), and, provided that such amount is paid by REC Supplier within 30 calendar days of Buyer's notice of such termination, as its exclusive remedy for REC Supplier's default hereunder, to receive cover from REC Supplier equal to the sum of the Replacement Price multiplied by the quantity of RECs not delivered due to the termination of the Agreement for the remaining Term of this Agreement and for which no renewable energy compliance payments were required; (ii) actual, reasonable and verifiable third party fees, including broker fees and legal fees and expenses incurred by Buyer in the enforcement and protection of its rights under this Agreement; and (iii) any renewable energy compliance payments paid by Buyer as a result of REC Supplier's failure to deliver RECs as required under this Agreement.

11.3 Exclusive Remedy. The remedies set forth in this Article 11 are the sole and exclusive remedies in the Event of Default of a party's obligations to sell or purchase RECs, and a party's liability shall be limited as set forth in this article. All other remedies or damages for failure to sell or purchase RECs that may be permitted by law are hereby waived.

11.4 Limitation of Liability. In the Event of Default, the defaulting party's liability shall be limited to direct, actual damages only, and such direct, actual damages shall be the sole and exclusive remedy hereunder. In no event shall any other liability be incurred by either party for any obligations which arise under this Agreement, including (but not limited to) consequential, incidental, punitive, exemplary, special, or indirect damages in tort, contract, or otherwise (except to the extent such damages are recovered against a party hereunder by an unaffiliated third party).

ARTICLE 12 INDEMNIFICATION

12.1 Indemnification Obligation. Each Party, to the extent permitted by law, shall indemnify, defend and hold harmless the other Party, its affiliated companies, and all of their directors, officers, employees, agents and representatives from and against all claims, liabilities, damages, losses or expenses to the extent arising out of any negligence, willful misconduct, breach of contract or violation of law of, or by, the indemnifying Party, its employees, agents, subcontractors, or assigns in the performance of this Agreement. In the event the Parties are jointly at fault, each Party shall indemnify the other in proportion to its relative fault.

12.2 Scope of Indemnification. The claims, liabilities, damages, losses or expenses covered for which indemnification may be sought under this Article 12 include, but are not limited to, settlements, judgments, court costs, attorneys' fees and other litigation expenses, fines, and penalties arising out of actual or alleged (a) injury to or death of any person, including employees of Buyer or REC Supplier, or (b) loss of or damage to property, including property of the Buyer or REC Supplier, or (c) breach of contract or (d) damage to the environment.

12.3 Notice. A Party seeking indemnification under this Article 12, shall give written notice to the indemnifying Party as soon as reasonably practicable after becoming aware of the facts and circumstances which may give rise to any claims, liabilities, damages, losses or expenses for which indemnification may be sought under this Article 12.

ARTICLE 13 CONFIDENTIALITY

13.1 Confidentiality. Except as provided in this Article 13, neither Party shall publish, disclose, or otherwise divulge Confidential Information to any person at any time during or after the Term of this Agreement, without the other Party's prior express written consent. Each Party shall permit knowledge of and access to Confidential Information only to those of its affiliates and to persons investing in, providing funding to or acquiring it or its affiliates, and to its and the foregoing persons' respective attorneys, accountants, representatives, agents and employees who have a need to know such Confidential Information related to this Agreement.

13.2 Required Disclosure. If required by any law, statute, ordinance, decision, order or regulation passed, adopted, issued or promulgated by a Governmental Authority having jurisdiction over a Party, that Party may release Confidential Information, or a portion thereof, to the Governmental Authority, as required by the applicable law, statute, ordinance, decision, order or regulation, and a Party may disclose Confidential Information to accountants in connection with audits, provided that such Party has notified the other Party of the required disclosure, such that the other Party may attempt (if such Party so chooses) to cause that Governmental Authority or accountant to treat such information in a confidential manner and to prevent such information from being disclosed or otherwise becoming part of the public domain.

13.3 Tax Treatment Exception. Notwithstanding any provision of this Agreement to the contrary, the legal obligations of confidentiality hereunder do not extend to the U.S. federal or state tax structure or the U.S. federal or state tax treatment of any transaction hereunder. If any

U.S. federal or state tax analyses or materials are provided to a Party, such Party is free to disclose any such analyses or materials without limitation.

13.4 Survival. The Parties obligations under this Article 13 shall survive for a period of one (1) year following the expiration or termination of this Agreement.

ARTICLE 14 GOVERNING LAW; WAIVER OF TRIAL BY JURY

14.1 Governing Law. This Agreement shall be construed, enforced, and performed in accordance with the laws of the State of Ohio, without recourse to principles governing conflicts of law.

14.2 Waiver of Trial by Jury. As a material inducement to each Party to enter into this agreement, the Parties each hereby irrevocably waive all right to trial by jury in any action, proceeding or counterclaim arising out of or relating hereto, any REC's or the transactions contemplated hereby. Each Party further waives any right to consolidate any action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived.

ARTICLE 15 MISCELLANEOUS

15.1 Entire Agreement. This Agreement, together with any attachments or exhibits specifically referenced herein, constitutes the entire agreement between the REC Supplier and the Buyer with respect to the subject matter hereof, supersedes all prior oral or written representations and contracts, and may be modified only by a written amendment signed by the Buyer and the REC Supplier.

15.2 Severability. In the event that any provision of the Agreement shall be found to be void or unenforceable, such findings shall not be construed to render any other provision of the Agreement either void or unenforceable, and all other provisions shall remain in full force and effect unless the provisions which are void or unenforceable shall substantially affect the rights or obligations granted to or undertaken by either Party.

15.3 Waiver. No delay or omission by a Party in the exercise of any right under this Agreement shall be taken, construed or considered as a waiver or relinquishment thereof, and any such right may be exercised from time to time and as often as may be deemed expedient. If any of the terms and conditions hereof is breached and thereafter waived by a Party, such waiver shall be limited to the particular breach so waived and is not deemed to waive any other breach hereunder.

15.4 Notices. All notices, payments and other formal communications which either Party may give to the other under or in connection with this Agreement shall be in writing and shall be sent by any of the following methods: hand delivery; reputable overnight courier; certified mail, return receipt requested; or, with respect to communications other than payments, by facsimile

transmission, if the original communication is delivered by reputable overnight courier. Communications to REC Supplier shall be sent to the address set forth on Appendix A and if to the Buyer:

Mail to:

[Insert Name] Robert B. Reeping
Manager – OH Regulated Commodity Sourcing
76 South Main Street 800 Cabin Hill Drive
Akron, OH 44308 Greensburg, PA 15601
Telephone: [Insert Phone] 724-838-6393
Facsimile: [Insert Fax] 724-853-4273
Email: [Insert Email] rreepi3@firstenergycorp.com

Copy to:

[Insert Name]
76 South Main Street
Akron, OH 44308
Telephone: [Insert Phone]
Facsimile: [Insert Fax]
Email: [Insert Email]

or to such other person at such other address as a Party may designate by like notice to the other Party. Communication shall be effective when received. Notice received after the close of the Business Day shall be deemed received on the next Business Day.

15.5 Netting and Setoff. If Buyer and REC Supplier are required to pay any amount under this Agreement on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the Party owed the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, Liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Agreement and/or any other Affiliated REC Agreement between the Buyer and REC Supplier, if any, may be offset against each other, set off or recouped therefrom. Any setoff shall not be subject to the automatic stay by virtue of Section 362(b) (6) of the Bankruptcy Code.

15.6 Disputes. The Buyer and the REC Supplier shall use good faith and reasonable commercial efforts to informally resolve all disputes arising out of the implementation of this Agreement. Any dispute between the Buyer and the REC Supplier under this Agreement may be referred to a designated senior representative of each of the Parties for resolution on an informal basis as promptly as practicable.

15.7 Compliance with Laws. Except as otherwise expressly provided in this Agreement, each Party shall comply, at its own expense, with the provisions of all laws and any applicable order and/or regulations, or any amendments or supplements thereto, which have been, or may at any time be, issued by a Governmental Authority relating to this Agreement and the transactions hereunder.

15.8 Remedies Cumulative. No right or remedy herein conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy under this Agreement.

15.9 Binding Effect; Limitation of Benefits. This Agreement shall be binding upon and shall insure to the benefit of the Parties hereto and, subject to the provisions of Article 7 hereof, their successors and permitted assigns. Nothing in this Agreement is intended to confer benefits, rights or remedies unto any Person other than the Parties and their permitted successors and assigns, and no third party shall have the right to enforce the provisions of this Agreement. The Buyer does not, nor should it be construed to, extend its credit or financial support for the benefit of any third parties lending money to or having other transactions with REC Supplier.

15.10 No Partnership or Joint Venture. This Agreement is not intended to create nor shall it be construed to create any partnership or joint venture relationship between Buyer and REC Supplier, and neither Party hereto shall have the power to bind or obligate the other Party. Neither Party hereto shall be liable for the payment or performance of any debts, obligations, or liabilities of the other Party, unless expressly assumed in writing herein or otherwise.

15.11 Auditing and Records. During the Term, Buyer may, at reasonable times and on reasonable notice, audit REC Supplier's records pertaining to the RECs and this Agreement and REC Supplier shall keep and maintain all reasonable records relating to this Agreement, including with respect to those records necessary for performing and verifying any calculations made hereunder, or necessary to verify REC Supplier's performance hereunder, for a period of 3 years following termination of this Agreement.

15.12 Survival. Except as otherwise expressly provided in this Agreement, obligations, limitations, exclusions and duties which by their nature extend beyond the expiration or termination of this Agreement, as well as any other provisions necessary to interpret the respective rights and obligations of the Parties hereunder, shall survive the expiration or earlier termination of this Agreement.

15.13 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together shall constitute one single agreement between the Parties.

[The Remainder Of This Page Is Intentionally Blank]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

ATTEST:

FIRSTENERGY SERVICE COMPANY, AS AGENT FOR
THE CLEVELAND ELECTRIC ILLUMINATING COMPANY OHIO EDISON COMPANY
THE TOLEDO EDISON COMPANY

By: _____

Name: [Insert Name]

Title: [Insert Title]

By: _____

Name: [Insert Name]

Title: [Insert Title]

Date: _____

Date: _____

[The Remainder Of This Page Is Intentionally Blank]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date indicated below.

ATTEST:

[Insert REC Supplier Name]

By: _____

By: _____

Name: [Insert Name]

Title: [Insert Title]

Name: [Insert Name]

Title: [Insert Title]

Date: _____

Date: _____

[The Remainder Of This Page Is Intentionally Blank]

APPENDIX A – REC TRANSACTION CONFIRMATION

DATED as of the [Insert Date] (the “Effective Date”)

BY AND BETWEEN,

FIRSTENERGY SERVICE COMPANY, AS AGENT FOR THE CLEVELAND ELECTRIC

ILLUMINATING COMPANY, OHIO EDISON COMPANY, AND

THE TOLEDO EDISON COMPANY

AND

REC Supplier Name: [Insert REC Supplier Name]

Product: Renewable Energy Credits (REC)

| **REC Type :** ☐ Ohio Solar ☐ Ohio Renewable

| **REC Quantity:** [Insert Number of credits per Reporting Year and total Number of credits for the Reporting Year Agreement Term]

Delivery Period: 00:00a.m. On [INSERT DATE] to midnight [INSERT DATE]

REC Price = [Insert price xx.xx] \$/REC

REC Supplier Account:

(Financial Institution) ABA#	[Insert ABA#]
Account #	[Insert Account Number]
Account Name:	[Insert account name]

Re: REC Purchase

|

Address for Notices

| The address for any notices to [Insert REC Supplier Name] provided pursuant to the REC Supplier Agreement shall be the following:

Name: [Insert Name]

Address: [Insert Address]

Phone: [Insert Phone]

Fax: [Insert Fax]

Email: [Insert Email]

Appendix B
Form of Letter of Credit
Sample Purchase and Sale Agreement For
Renewable Energy Credits
Letter of Credit

(Date)

Letter of Credit No.

To: FirstEnergy Service Company as agent for The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company ("Beneficiary")

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 _____ 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 upon an Event of Default under the Purchase and Sale Agreement for Renewable Energy Credits between the Applicant and you, dated _____.
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. (New York, NY time¹) on such Business Day to _____

(Bank), _____ (address), (i) a notice executed by

you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of each of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of each of the Beneficiary. Authorized Officer shall mean President, Treasurer, any Vice President or any Assistant Treasurer.

4. 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 bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (New York, NY time) on the date of such drawing, if delivery of this requisite document is made prior to 11:00 AM (New York, NY time) on Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the

¹ 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.

date of such drawing if delivery of the requisite document is made on or after 11:00 AM (New York, NY time) on any Business Day pursuant to Paragraph 3 herein above.

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 exceeding 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 nonconforming 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.

~~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 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 herein above, (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto, or (iv) 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 Beneficiary by registered or certified mail, return

7. 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 irrevocable standby Letter of Credit for such additional one (1) year period.

8. As used herein:

"Availability Certificate" shall mean a certificate substantially in the form of Annex 3 hereto, appropriately completed and duly signed by your authorized officer.

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

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity who you certify 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 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. Transfers fees shall be borne by the Applicant.

~~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

10. _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 senior unsecured debt rating of "A" from Standard & Poor's Rating Service.

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.

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 by 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 Letter of Credit has been sent to the Company located at _____ above (as per Applicant's instructions). The aggregate amount paid to the Company 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 (except for Annex 5) or other communications directed to us under this Letter of Credit must

be signed by an Authorized Officer of the FirstEnergy Service Company. 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 FirstEnergy Service Company.

Very truly yours,
(Bank)

By: _____

Name:

Title:

By: _____

Name:

Title:

Annex 2 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 herein that are 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 there is an Event of Default under any Renewable Energy Credit Purchase and Sale Agreement between the Applicant and us.
3. The amount to be received by FirstEnergy Service Company for total equal to the aggregate amount in the previous paragraph.
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,

FirstEnergy Service Company BY:
Name:
Title:
Date:

Annex 2 to Letter of Credit
DRAWING UNDER LETTER OF CREDIT NO.
_____, 20____

ON [Business Day immediately succeeding Date of presentation] PAY TO:

FirstEnergy Service Company

\$ _____

For credit to the account of _____.

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

(Bank)
(Address)

FirstEnergy Service Company BY:

Name:

Title:

Date:

Annex 3 to Letter of Credit
AVAILABILITY CERTIFICATE UNDER
LETTER OF CREDIT NO.

To: _____, 20____
(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 this 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
Addresses

Very truly yours,

FirstEnergy Service Company By:
Name:
Title:
Date:

APPLICANT NAME

By: _____
Name:
Title:
Date:

Agreed and Accepted:
(Bank)

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.

FirstEnergy Service Company By:
Name:
Title:
Date:

cc: _____ (Applicant Name)

Annex 5 to Letter of Credit NOTICE
OF EXTENSION OF LETTER OF
CREDIT NO.

, 20__

To FirstEnergy Service Company:

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:

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 or 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 direct to the transferee with your customary notice of transfer.

Enclosed is a certified check in the amount of \$ _____ in payment of your transfer commission and in addition we agree to pay to you on demand any expenses that may be incurred by you in conjunction with this transfer.

Very Truly Yours

(signature of the Company)

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

APPENDIX C

FORM OF GUARANTY

GUARANTY (this "Guaranty"), dated as of _____, made by _____ (the "Guarantor"), a corporation organized and existing under the laws of _____ in favor of FirstEnergy Service Company as agent for The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company (the "Guaranteed Parties"), corporations organized and existing under the laws of the State of Ohio. Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (defined below).

Guarantor enters into this Guaranty in consideration of, and as an inducement for, Guaranteed Parties having entered into or entering into that certain Purchase and Sale Agreement for Renewable Energy Credits dated _____ (the "Agreement") with _____ [Name], a _____ [State] [corporation] (the "Seller"), which may involve the extension of credit by the Guaranteed Parties. Guarantor, subject to the terms and conditions hereof, hereby unconditionally and absolutely guarantees to the Guaranteed Parties the full and prompt payment when due, upon demand in writing from the Guaranteed Parties to the Guarantor's attention at the address for Guarantor set forth in Article 11 hereof, of any and all amounts payable by the Seller to the Guaranteed Parties arising out of the Agreement, and:

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the Seller as a result of an Event of Default under the Agreement (including indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall in no event exceed _____. All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the insolvency or bankruptcy of the Seller, and any right to require a proceeding first against the Seller.
3. The Guaranteed Parties may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any document or any person (including the Seller) that the Guaranteed Parties determine in their sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Parties; or (iii) compromise or subordinate any Guaranteed Obligation(s) or liability of the Seller to the Guaranteed Parties including any security therefore.
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge or release of the Seller concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the Seller; (ii) the rendering of any judgment against the Seller or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations (to which the Guarantor hereby consents) ; (iv) any modification,

amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the Seller and the Guaranteed Parties; (v) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the Seller or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the Seller or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the Seller, the Guaranteed Parties or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the Seller of amounts to be paid by it under the Agreement or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the Seller, any other guarantor, the Guaranteed Parties or any other corporation or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

5. The Guarantor hereby irrevocably waives (i) any right of reimbursement or contribution, and (ii) any right of salvage against the Seller or any collateral security or guaranty or right of offset held by the Guaranteed Parties therefor.
6. The Guarantor will not exercise any rights which it may acquire by way of subrogation until all Guaranteed Obligations to the Guaranteed Parties pursuant to the Agreement have been paid in full.
7. Subject to the terms and conditions hereof, this Guaranty is a continuing one and all liabilities to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. Except for a failure to comply with any applicable statute of limitations, no failure or delay on the part of the Guaranteed Parties in exercising any right, power or privilege hereunder, and no course of dealing between the Guarantor and the Guaranteed Parties, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies, which the Guaranteed Parties would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other or further notice of demand in similar or other circumstances or constitute a waiver of the rights of the Guaranteed Parties to any other or further action in any circumstances without notice or demand.
8. This Guaranty shall be binding upon the Guarantor and upon its successors and assigns and shall inure to the benefit of and be enforceable by the Guaranteed Parties and their successors and assigns; provided, however, that the Guarantor may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guaranteed Parties. The assignment rights of the Guaranteed Parties will be in accordance with the terms of the Agreement.
9. Neither this Guaranty nor any provision hereof may be changed, waived, discharged or terminated except upon written agreement of the Guaranteed Parties and the Guarantor.
10. The Guarantor agrees that its liability as guarantor shall continue and remain in full force and effect in the event that all or any part of any payment made hereunder or any obligation or liability guaranteed hereunder is recovered (as a fraudulent conveyance, preference or otherwise) rescinded or must otherwise be reinstated or returned due to bankruptcy or insolvency laws or otherwise.
11. All notices and other communications hereunder shall be made at the addresses by hand delivery, by the next day delivery service effective upon receipt or by certified mail return receipt requested (effective upon scheduled weekday delivery day) or telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received):

If to the Guarantor:

[To be completed]

If to the Guaranteed Parties:

Thomas R. Sims
Credit Risk Analyst
FirstEnergy Corp.
76 South Main Street, 17th Floor
Akron, OH 44308
Telephone: 330-384-3808
Facsimile: 330-255-1662
simst@firstenergycorp.com

Copy to:

William R. Ridmann
Vice President, Rates & Regulatory Affairs
FirstEnergy Corp.
76 South Main Street, 8th Floor
Akron, OH 44308
Telephone: 330-761-4154
Facsimile: 330-761-4281
wrridmann@firstenergycorp.com

| and:

Dean W. Stathis
Director, Regulated Commodity Sourcing
2800 Pottsville Pike
Reading PA 19612-6001
Telephone: 610-921-6766
Facsimile: 610-939-8542
dstathis@firstenergycorp.com

| and:

Associate General Counsel
FirstEnergy Corp.
76 South Main Street
Akron, OH 44308
Facsimile: 330-384-3875

12. If claim is ever made upon the Guaranteed Parties for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Parties repay all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Parties hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.
14. This Guaranty shall remain in full force and effect until all Guaranteed 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 the Guaranteed Parties, which termination shall be effective only upon receipt by the Guaranteed Parties of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Parties. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its _____ [insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement, Articles of Incorporation or by-laws] or any law, regulation or contractual restriction binding on it or its assets.
16. This Guaranty and the rights and obligations of the Seller and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Ohio. The Guarantor and Guaranteed Parties agree to the exclusive jurisdiction of State and federal courts located in the State of Ohio over any disputes arising from or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Parties each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Parties and the Guarantor with respect to subject matter hereof. The Guaranteed Parties and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
18. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No trustee or shareholder of Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and such Guaranty shall not be enforceable against any such trustee in his or her individual capacity. This Guaranty shall be enforceable against the trustees of Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to Guarantor, its shareholders or trustees shall look solely to the trust estate of Guarantor for the payment or satisfaction thereof.

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be executed and delivered as of the date first above written to be effective as of the earliest effective date of any of the Agreement.

[GUARANTOR]

By: _____
Title:

Accepted and Agreed to:

FirstEnergy Service Company

By: _____

Name:

Title:

Date:

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 11-4625-EL-ACP

Summary: Application for Approval of Request for Proposal to Purchase Renewable Energy Credits through Ten Year Contracts electronically filed by Ms. Carrie M Dunn on behalf of The Cleveland Electric Illuminating Company and Ohio Edison Company and The Toledo Edison Company