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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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In the Matter of the Application of Duke )  
Energy Ohio for Authority to Establish a )  
Standard Service Offer Pursuant to Section )  
4928.143, Revised Code, in the Form of ) Case No. 11-3549-EL-SSO  
an Electric Security Plan, Accounting )  
Modifications and Tariffs for Generation )  
Service. )  
  
In the Matter of the Application of Duke )  
Energy Ohio for Authority to Amend its ) Case No. 11-3550-EL-ATA  
Certified Supplier Tariff, P.U.C.O. No. 20. )  
  
In the Matter of the Application of Duke )  
Energy Ohio for Authority to Amend its ) Case No. 11-3551-EL-UNC  
Corporate Separation Plan. )

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STIPULATION AND RECOMMENDATION

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Rule 4901-1-30, Ohio Administrative Code (O.A.C.), provides that any two or more parties to a proceeding may enter into a written stipulation covering the issues presented in such a proceeding. The purpose of this document is to set forth the understanding and agreement of the parties that have signed below (Signatory Parties or Parties) and to recommend that the Public Utilities Commission of Ohio (Commission) approve and adopt this Stipulation and Recommendation (Stipulation), which resolves all of the issues raised by the parties in this case relative to Duke Energy Ohio's Application for Approval of an Electric Security Plan and Associated Tariffs, for Approval to Amend its Certified Supplier Tariff, and for Approval to Amend its Corporate Separation Plan (Application). This Stipulation is supported by adequate

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data and information including, but not limited to, Duke Energy Ohio's Application and testimony filed on June 20, 2011, and the Attachments filed herewith.

The Stipulation represents a just and reasonable resolution of the issues raised in these proceedings, violates no regulatory principle or precedent, and is the product of lengthy, serious bargaining among knowledgeable and capable Parties in a cooperative process, encouraged by this Commission and undertaken by the Parties representing a wide range of interests, including the Commission's Staff, to resolve the aforementioned issues. Although this Stipulation is not binding on the Commission, it is entitled to careful consideration by the Commission. For purposes of resolving all issues raised by these proceedings, the Parties stipulate, agree, and recommend as set forth below.

This Stipulation is a reasonable compromise that balances diverse and competing interests and does not necessarily reflect the position that any one or more of the Parties would have taken had these issues been fully litigated. This Stipulation represents an agreement by all Parties to a package of provisions rather than an agreement to each of the individual provisions included within the Stipulation. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation.

This Stipulation is submitted for purposes of these proceedings only, and neither this Stipulation nor any Commission Order considering this Stipulation shall be deemed binding in any other proceeding nor shall this Stipulation or any such Order be offered or relied upon in any other proceedings, except as necessary to enforce the terms of this Stipulation.

The Signatory Parties agree that the settlement and resulting Stipulation are a product of serious bargaining among capable, knowledgeable Parties. This Stipulation is the product of an

open process in which all parties were represented by able counsel and technical experts. The Stipulation represents a comprehensive compromise of issues raised by Parties with diverse interests. The Signatory Parties, which include Duke Energy Ohio, Ohio Energy Group, Industrial Energy Users-Ohio, The Office of the Ohio Consumers' Counsel, Ohio Manufacturer's Association, the Commission Staff,<sup>1</sup> City of Cincinnati, Ohio Partners for Affordable Energy, Retail Energy Supply Association, The Greater Cincinnati Health Council, The Ohio Environmental Council, People Working Cooperatively, Inc., Environmental Law & Policy Center, the Kroger Company, Constellation NewEnergy, Inc., Constellation Energy Commodities Group, Inc., FirstEnergy Solutions Corp., EnerNOC, Inc., Vectren Retail, LLC d/b/a/ Vectren Source, AEP Retail Energy Partners LLC, PJM Power Providers Group, Direct Energy Services, LLC, Direct Energy Business LLC, Miami University, the University of Cincinnati, COMPETE Coalition, Duke Energy Retail Sales, LLC, American Municipal Power, Inc., Interstate Gas Supply, Inc., Exelon Generation Company, LLC, the Natural Resources Defense Council, Wal-Mart Stores East, LP, Sam's East, Inc., Cincinnati Bell Inc., and the Council of Smaller Enterprises have signed the Stipulation and adopted it as a reasonable resolution of all issues.<sup>2</sup> The Signatory Parties believe that the Stipulation that they are recommending for Commission adoption presents a fair and reasonable result.

The Signatory Parties agree that the settlement, as a package, benefits ratepayers, and is in the public interest. The Signatory Parties agree that the settlement package does not violate any important regulatory principle or practice.

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<sup>1</sup> The Commission Staff is a party for the purpose of entering into this Stipulation by virtue of O.A.C. 4901-1-10(C).

<sup>2</sup> Industrial Energy Users-Ohio (IEU-Ohio) supports the Stipulation. However, IEU-Ohio takes no position regarding Sections VI.B., VII.A., VII.M., VIII.A., IX.M., IX.U.(ii), and IX.AA., or does not support or oppose such sections, so that IEU-Ohio's support for the Stipulation may not be used as precedent in any other proceeding.

WHEREAS, all of the related issues and concerns raised by the Parties have been addressed in the substantive provisions of this Stipulation, and reflect, as a result of such discussions and compromises by the Parties, an overall reasonable resolution of all such issues;

WHEREAS, this Stipulation is the product of the discussions and negotiations of the Parties and is not intended to reflect the views or proposals that any individual Party may have advanced acting unilaterally;

WHEREAS, this Stipulation represents an accommodation of the diverse interests represented by the Parties and is entitled to careful consideration by the Commission;

WHEREAS, this Stipulation represents a serious compromise of complex issues and involves substantial benefits that would not otherwise have been achievable; and

WHEREAS, the Parties believe that the agreements herein represent a fair and reasonable resolution to the issues raised in the case set forth above concerning Duke Energy Ohio's Application;

NOW, THEREFORE, the Parties stipulate, agree, and recommend that the Commission make the following findings and issue its Opinion and Order in these proceedings approving this Stipulation in accordance with the following:

**I. TERM**

- A. The Parties agree that Duke Energy Ohio's Electric Security Plan (ESP) will be for the period of January 1, 2012, through May 31, 2015. The Parties further agree that Duke Energy Ohio shall file its next application, pursuant to R.C. 4928.141, for a standard service offer (SSO) no later than June 1, 2014. This subsequent application shall make provision for SSO supply procurements via a descending-clock format, competitive bid process (CBP) and the Parties hereby expressly

waive any rights that they may have to contest the use of such a CBP for the purpose of establishing Duke Energy Ohio's next SSO. The Parties agree to hold a collaborative meeting prior to March 31, 2014, to discuss lessons learned and potential improvements to the bid process, including, but not limited to, the need, if any, to address changes to the rules regarding switching between SSO and CRES providers, for consideration in Duke Energy Ohio's next SSO. Through the CBP to be included in its next SSO application, Duke Energy Ohio will seek to procure, on a slice of system basis, the aggregate wholesale full requirements SSO supply, which includes energy and capacity, market-based transmission service,<sup>3</sup> and market-based transmission ancillary services requirements, for the period of its next SSO. Said process shall be conducted by an independent bid manager and consistent with the bid documents submitted as a part of Duke Energy Ohio's Application in the above-referenced proceeding, as modified in this Stipulation and the Attachments hereto. The Parties further acknowledge and agree that they shall expressly support the use, by Duke Energy Ohio, of such a CBP for purposes of acquiring all of the supply needed to serve its SSO load under the next SSO. The Parties reserve all other rights that they may have to support, contest, or recommend modification of Duke Energy Ohio's next SSO. Consistent with paragraph B, below, Duke Energy Ohio expressly reserves all rights to withdraw its next SSO application.

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<sup>3</sup> "Market-based transmission services," for purposes of this Stipulation, include those PJM (as defined below) charges and credits assigned to competitive retail electric service providers and those identified on the sample PJM Invoice as being assigned to wholesale suppliers. The PJM Sample Invoice is provided in the Master Supply Agreement, Attachment D to this Stipulation.

- B. In the event the Commission rejects Duke Energy Ohio's next SSO application or substantially modifies it such that Duke Energy Ohio withdraws the application, the Parties expressly acknowledge and agree that the auction-based pricing and cost-recovery provisions of the SSO structure under which Duke Energy Ohio is operating as of May 31, 2015, shall persist until such time as a subsequent SSO is approved and not withdrawn, as provided for in R.C. 4928.143(C)(2)(a), by Duke Energy Ohio. Any such withdrawal by Duke Energy Ohio shall be filed within 30 days following the issuance of the Commission's final order. Specifically, for the term commencing June 1, 2015, unless a new SSO is approved by the Commission and not withdrawn by Duke Energy Ohio, prior to April 1, 2015, Duke Energy Ohio will procure, through a descending clock, auction-based SSO procurement process substantially similar to the auctions conducted under the ESP described herein, a full requirements load following product for a term that is not less than quarterly or more than annually until a new SSO is approved and not withdrawn, with retail generation rates being determined based on the results of those auction-based SSO load procurements. The Parties agree and recommend that the Commission determine the term for the procurement process upon the filing of any Duke Energy Ohio withdrawal of its next SSO application. For purposes of this paragraph, the Parties also agree that, for so long as Duke Energy Ohio is a Fixed Resource Requirements (FRR) entity under PJM Interconnection, LCC, (PJM), it will provide capacity at the Final Zonal Capacity Price (FZCP) in the unconstrained regional transmission organization (RTO) region. For the period during which Duke Energy Ohio participates in PJM's Reliability Pricing

Model (RPM) and Base Residual Auction (BRA), the capacity price is the FCZP for the DEOK load zone region, and capacity shall be provided pursuant to the PJM RPM process. The Parties agree that the Commission's oversight of said procurement process shall be consistent with the oversight afforded it in the ESP discussed herein. For purposes of this paragraph, a full requirements load following product shall include energy and capacity delivered to the DEOK load zone, as well as market-based transmission service, and market-based transmission ancillary service, plus the reasonable costs to procure.

## **II. SSO SUPPLY**

- A. Duke Energy Ohio agrees to procure all of its energy, capacity, market-based transmission service, and market-based transmission ancillary services requirements for its SSO load, for the duration of the ESP, through the CBP outlined in Duke Energy Ohio's Application in these proceedings and testimony filed in support thereof, except as modified in this Stipulation and the Attachments hereto. The auction schedule shall proceed consistent with Attachment A, hereto.
- B. Acknowledging Duke Energy Ohio's status as an FRR entity in PJM, the Parties agree that Duke Energy Ohio shall supply capacity to PJM, which, in turn, will charge for capacity to all wholesale supply auction winners for the applicable time periods of Duke Energy Ohio's ESP with the charge for said capacity determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.
- C. Duke Energy Ohio will implement Rider RC (Retail Capacity) and Rider RE (Retail Energy) to recover the costs associated with serving its SSO load, with the

aggregate sum of the revenues under said riders equal to the auction clearing prices, as converted into retail rates. Rider RC shall recover the cost of capacity consistent with paragraph B above and Rider RE shall recover all remaining auction costs, including energy, market-based transmission service, and market-based transmission ancillary services. Rider RC and Rider RE are unconditionally bypassable by all non-SSO customers. Rider RC and Rider RE will be put into effect through updated rates for each of the PJM planning years for which all tranches for the delivery period have been approved by the Commission.

- D. Duke Energy Ohio shall implement conditionally bypassable Rider SCR (Supplier Cost Reconciliation) to recover any difference between the payments made to suppliers for SSO service and the amount of revenue collected from Rider RC and Rider RE. Rider SCR will also be used to recover all prudently incurred costs associated with conducting the auctions for SSO service and any costs resulting from supplier default. Rider SCR will be filed quarterly in this docket and will be subject to annual audits by the Commission at its discretion. The monthly accumulated balance of over- or under-recovery will accrue a carrying charge equal to Duke Energy Ohio's overall cost of long-term debt, as approved in its most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*).

Rider SCR shall be bypassable by shopping customers during the time that they purchase retail electric generation service from a competitive retail electric service (CRES) provider, as long as the balance of said Rider is less than 10 percent of Duke Energy Ohio's overall actual SSO revenue (*i.e.*, all revenue



collected for SSO service under Riders RE, RC, RECON, and AER-R) for the most recent quarter for which data is available at the time of the filing. If the balance of Rider SCR becomes equal to or greater than 10 percent of Duke Energy Ohio's overall actual SSO revenue, Duke Energy Ohio shall apply to the Commission for confirmation that Duke Energy Ohio should modify the Rider such that it becomes non-bypassable (whether the balance in the Rider results from over- or under-recovery). Rider SCR will again become bypassable for shopping customers if the balance of said Rider falls below 10 percent of Duke Energy Ohio's overall actual SSO revenue.

- E. Upon Commission approval of the bids, Duke Energy Ohio shall determine the rates for Rider RE and Rider RC by converting the clearing prices from each auction into retail rates pursuant to the methodology contained in Attachment B. The conversion of the auction prices into Rider RC and Rider RE will include applicable losses.
- F. Affiliates and subsidiaries of Duke Energy Ohio shall be permitted to participate and compete in the SSO auctions on the same fair and non-discriminatory manner as all other participants. Duke Energy Ohio shall not give any competitive advantage to an affiliate or subsidiary participating in the SSO auctions. Notwithstanding the above, Duke Energy Ohio agrees that, for the period during which Rider ESSC (referenced and defined below in Section VII.A.) is in place, and irrespective of ownership of its generation assets (Generation Assets),<sup>4</sup> it shall not participate in the SSO auctions. Rather, during said period and irrespective of

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<sup>4</sup> For purposes of this Stipulation, "Generation Assets" shall refer to all generation assets currently, directly owned by Duke Energy Ohio, whether operating or retired, but shall not include any generation assets currently owned by an affiliate or subsidiary of Duke Energy Ohio.

ownership, Duke Energy Ohio shall cause the energy from all of its Generation Assets to be sold into the Day Ahead or Real Time PJM energy markets, or on a forward basis through a bilateral arrangement. Any forward bilateral sales must be done at a liquid trading hub (*i.e.*, Western Hub, AD-Hub, Cinergy Hub) at the then current market wholesale equivalent price. ICE (Intercontinental Exchange) or a similar publicly available document shall be used as a form of measure of the then current market wholesale equivalent pricing. The Commission Staff, or, at the Commission's discretion, an independent auditor, shall semi-annually audit Duke Energy Ohio records to ensure compliance with this provision. The cost of any such audits shall be recovered through Rider SCR.

- G. The Parties agree that there shall be load caps applicable to each auction conducted during the term of the ESP, with no one supplier being able to bid upon or awarded more than 80 percent of the tranches in any one auction.
- H. The Parties agree that the bidding process as described in the Company's Application, and as modified herein, shall be conducted by an independent bidding manager, CRA International, dba Charles River & Associates (CRA International), except as provided below in Section II.I. The Parties further agree that the Commission may also retain a consultant who may monitor the bidding process and the costs of such consultant shall be recovered under Rider SCR.
- I. Within the first 30 days following Commission approval of the results of each auction, Commission Staff may notify Duke Energy Ohio of its desire to evaluate the use of an independent auction manager other than CRA International. Within 30 days of such notification, Duke Energy Ohio and Commission Staff shall

jointly: (1) confirm whether CRA International will continue to serve as the independent auction manager; or (2) identify a new independent auction manager; or (3) identify a process to determine the new auction manager. In order to avoid disruption to the auction schedule, the substitution of the independent auction manager shall occur no sooner than 6 months after confirmation of such a substitution. If Commission Staff does not provide notice, as set forth above, CRA International shall continue to serve as the auction manager until such time as a substitution is confirmed. In no event shall the substitution of the independent auction manager delay or otherwise alter the bidding schedule as delineated in Attachment A or result in a modification of the CBP or bidding documents detailed in Duke Energy Ohio's Application, and as modified herein, except to revise the identification of, and contact information for, the auction manager. The Parties agree that any costs associated with the substitution of independent auction managers shall be recovered through Rider SCR.

- J. The Parties agree that the Commission may reject the results of any auction, by means of an order filed within 48 hours of the conclusion of each such auction, based upon a report from the independent auction manager or the Commission's consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the Commission determines that one or more of the following criteria were not met:
  - i. The bidding process was oversubscribed based upon bidder indicative offers submitted as part of the Part 2 Application, such that the amount of the supply bid upon was greater than the amount of the load bid out;

- ii. There were four or more bidders; or,
- iii. Consistent with the load cap, no bidder won more than 80 percent of the tranches in any one auction.

### **III. TRANSMISSION SERVICES**

- A. Transmission services shall be provided consistent with the Opinion and Order issued by the Commission on May 25, 2011, in Case No. 11-2641-EL-RDR, *et al.*, except that the Parties hereby agree that PJM Schedule 1 (Scheduling, System Control, and Dispatch) shall not be included in Rider BTR and will be billed directly to wholesale auction winners and CRES providers by PJM.

### **IV. CAPACITY FOR SHOPPING CUSTOMERS**

- A. Consistent with Section II.B., above, the Parties agree that Duke Energy Ohio shall supply capacity resources to PJM, which, in turn, will charge for capacity resources to all CRES providers in its service territory for the term of the ESP, with the exception of those CRES providers that have opted out of Duke Energy Ohio's FRR plan, for the period during which they opted out. The Parties further agree that, during the term of the ESP, Duke Energy Ohio shall charge CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region, for the applicable time periods of its ESP. When computing the capacity allocations for PJM, Duke Energy Ohio shall use an allocation formula in common use in PJM.

### **V. FUTURE CAPACITY SUPPLY**

- A. Upon Duke Energy Ohio's signing of this Stipulation, it will provide its generating unit commitment information to PJM as soon as reasonably possible

but no later than February 1, 2012. Provided that Duke Energy Ohio does not withdraw the ESP approved in a Commission Order prior to February 29, 2012, it will terminate its election of an FRR plan and provide written notice by March 2, 2012, to the PJM Office of the Interconnection of its intent to participate in the RPM and the BRA for the 2015/2016 planning year. If Duke Energy Ohio is required to make a filing with the Federal Energy Regulatory Commission (FERC) to terminate its FRR status for the 2015/2016 planning year, the Parties agree not to intervene in said proceeding for the purpose of contesting, opposing, or otherwise objecting to the termination of the election; nor shall the Parties seek to delay the proceeding. Nothing herein prohibits the Parties from intervening in such proceeding for the purpose of supporting the filing. In the event Duke Energy Ohio is precluded from terminating its FRR plan for the 2015/2016 planning year and, in addition, the Commission's final order in these proceedings permits full legal corporate separation as set forth in this Stipulation, Duke Energy Ohio will provide notice to PJM (pursuant to Schedule 8.1 of the Reliability Assurance Agreement) no later than March 2013 that it intends to participate in the RPM and BRA for the 2016/2017 planning year. Further, in the event Duke Energy Ohio is precluded from terminating its FRR plan for the 2015/2016 planning year, it shall supply capacity to PJM, which, in turn, shall charge all wholesale auction winners, generation suppliers for the PIPP (as defined below) contract load, and CRES providers for capacity as determined by the PJM RTO, which is the FZCP in the unconstrained RTO region.

## **VI. RENEWABLE ENERGY CREDITS**

- A. Duke Energy Ohio will implement Rider AER-R as proposed in its Application to recover the costs incurred in complying with the requirements of R.C. 4928.64, *et seq.* The Parties agree and recommend that Rider AER-R shall not expire upon the termination of the ESP on May 31, 2015, but instead shall continue in order to enable recovery of all reasonable and prudently incurred costs for the acquisition of renewable energy credits (RECs), including brokerage fees, REC tracking participation expenses, gains and losses realized from the sale of RECs, and carrying costs at the long term cost of debt, as approved in Duke Energy Ohio's most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*). Rider AER-R shall remain bypassable for customers taking generation service from a CRES provider. Rider AER-R will be filed quarterly and will include true-up provisions, with annual audits conducted by Commission Staff, or an independent auditor at the discretion of the Commission, in a manner similar to that employed in Duke Energy Ohio's current fuel and purchased power tracker.
- B. Within 60 days of Commission issuance of a final order adopting the Stipulation that does not result in Duke Energy Ohio's withdrawal of its SSO Application, Duke Energy Ohio will engage in collaborative discussions with interested parties to prepare an application to revise certain elements of the current R.C. 4928.64 residential solar REC (SREC) purchase program. With the common goal of expanding customer participation in the program, Duke Energy Ohio will work with the Signatory Parties to identify mutually agreeable modifications aimed at

enhancing clarity, transparency, and certainty of contractual terms. These changes may include, but may not be limited to, features such as the assignment of a known SREC price over the length of the contract, an up-front rebate with certain output standards, or another, mutually agreed solution as yet to be developed. AEP Ohio's program, as stated and approved in Case No. 09-1872-EL-ACP, will be evaluated as a potential model for Duke Energy Ohio's modified program, in addition to other potential program modifications. If the Parties are unable, within 60 days of the start of the collaborative process, to agree on changes to Duke Energy Ohio's existing SREC tariff, Duke Energy Ohio shall file a letter at the Commission indicating that the Parties could not reach agreement. In such event, the other Parties retain the right to petition the Commission to make changes to Duke Energy Ohio's existing SREC tariff. The Commission will become the final arbiter in the event of such a dispute.

- C. Within 60 days of the Commission's issuance of a final order adopting the Stipulation that does not result in Duke Energy Ohio's withdrawal of its SSO application, Duke Energy Ohio will initiate collaborative work in consultation with the Ohio Environmental Council, Environmental Law & Policy Center, and other interested Signatory Parties on an evaluation and report on Combined Heat and Power. This commitment is identified in the stipulation filed in Case No. 10-503-EL-FOR on March 21, 2011.

## **VII. OHIO POLICY**

- A. For the calendar years 2012, 2013, and 2014 of the ESP, Duke Energy Ohio shall recover annually, via a non-bypassable generation charge called the Electric

Service Stability Charge Rider (Rider ESSC), an amount intended to provide stability and certainty regarding Duke Energy Ohio's provision of retail electric service as an FRR entity while continuing to operate under an ESP.<sup>5</sup> Duke Energy Ohio shall be permitted to implement an ESSC rate to collect \$110 million per year for a period of three years commencing January 1, 2012, with the collection to be trued-up annually and the total equal to \$330 million, allocated in accordance with Attachment B. The revenue collected under Rider ESSC shall stay with Duke Energy Ohio and shall not be transferred to any subsidiary or affiliate.

- B. For calendar year 2012, Duke Energy Ohio commits to a \$1,000,000 contribution to support economic development efforts in its service territory. For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$1,000,000, annually, to support economic development efforts, provided Duke Energy Ohio's return on equity (ROE), as determined in its then most recent annual significantly excessive earnings test (SEET) review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and Duke Energy Ohio shall have sole discretion to direct the use and allocation of the funding, which shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

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<sup>5</sup> The Office of the Ohio Consumers' Counsel (OCC), FirstEnergy Solutions, and the Ohio Manufacturer's Association (OMA) support the Stipulation. However, the OCC, FirstEnergy Solutions, and OMA take no position regarding Section VII.A., or do not support or oppose the paragraph, so that the OCC's, FirstEnergy Solutions', and OMA's support for the Stipulation may not be used as precedent in any other proceeding.



- C. For calendar year 2012, Duke Energy Ohio commits to a \$100,000 contribution to the OMA to support economic development and energy efficiency initiatives among its members within Duke Energy Ohio's service territory. For each of the remaining two calendar years of the ESP, Duke Energy Ohio agrees to provide \$100,000 annually, to support economic development and energy efficiency efforts provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to OMA members in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- D. For the term of this ESP, while percentage of income payment plan (PIPP) customers will remain retail generation customers of Duke Energy Ohio, their metered, retail load and usage will be supplied by FirstEnergy Solutions at a 5 percent discount off the applicable residential price to compare, excluding Rider AER-R. Duke Energy Ohio will enter into a wholesale bilateral contract with FirstEnergy Solutions at such pricing for the full requirements supply including capacity, energy, market-based transmission services, and market-based transmission ancillary services for the term of the ESP, with power flow under such wholesale contract commencing January 1, 2012. While Duke Energy Ohio is an FRR entity, it will continue to supply the capacity at the FZCP for the unconstrained RTO region. Duke Energy Ohio will continue to supply RECs associated with the PIPP load, as required under the alternative energy resource

requirements of the Commission, with cost recovery through Rider AER-R. Under the bilateral contract, FirstEnergy Solutions will supply power to Duke Energy Ohio at wholesale in an amount sufficient to meet the requirements of all PIPP customers taking service under Duke Energy Ohio's tariffs and riders for generation service. For purposes of this section, a PIPP customer shall be defined as any customer who is a PIPP customer as of January 1, 2012, and any customer who thereafter is enrolled in the PIPP program during the period of this ESP. Within five days of the filing of this Stipulation, Duke Energy Ohio will enter into the bilateral agreement with FirstEnergy Solutions as referred to herein, with performance obligations thereunder expressly conditioned upon Duke Energy Ohio's acceptance of the Commission's order approving or modifying and approving the Stipulation.<sup>6</sup>

- E. For calendar year 2012, Duke Energy Ohio commits to a \$1,000,000 contribution for low-income weatherization efforts in its service territory, to be administered by People Working Cooperatively (PWC). For each of the two remaining calendar years of the ESP, the Company agrees to provide \$1,000,000 annually to support low-income weatherization, provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service

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<sup>6</sup> The Retail Energy Supply Association; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group, Exelon Generation Company, LLC; Direct Energy Services, LLC; Direct Energy Business LLC; Interstate Gas Supply, Inc; Vectren Retail, LLC d/b/a Vectren Source; Wal-Mart East, LP; Sam's East, Inc.; PJM Power Providers Group; and AEP Retail Energy Partners LLC support the Stipulation but do not endorse Section VII, Paragraph D.

territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

- F. Duke Energy Ohio and PWC will jointly undertake a pilot energy efficiency project. This pilot will utilize Duke Energy Ohio funds provided to PWC for low-income weatherization. PWC will use Duke Energy Ohio dollars to leverage additional energy efficiency funds from non-utility public and private sources for both electric and gas energy efficiency for low-income households. The leveraged energy efficiency funds will provide funding for low-income weatherization services that will yield energy efficiency that is enhanced by additional improvements in the home and funded by other sources. It is anticipated that the enhanced energy efficiency services will yield better results as measured by the total resource cost test. Duke Energy Ohio and PWC will provide the results of the pilot energy efficiency project to the energy efficiency collaborative and will jointly file such results with the Commission and seek the Commission's approval of inclusion of the enhanced energy efficiency attributes in Duke Energy Ohio's portfolio of programs for energy efficiency. The project shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- G. For calendar year 2012, Duke Energy Ohio commits to a \$350,000 fuel fund contribution to benefit electric consumers in its service territory who are at or below 200 percent of poverty level. The fund will be managed in conjunction with the Ohio Department of Development or its successor, in a manner

consistent with the operation of the fuel fund provided by Duke Energy Ohio during the current ESP. Assistance will be provided through the agencies in the Duke Energy Ohio service territory that provide assistance under the Emergency Home Energy Assistance Program in the Duke Energy Ohio service territory. For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$350,000 in continued support of the fuel fund, provided Duke Energy Ohio's ROE, as determined in its then most recent annual SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.

- H. For calendar year 2012, Duke Energy Ohio commits to a \$325,000 contribution for low-income weatherization efforts in its service territory in Adams, Brown, Butler, Clermont, Clinton, Highland, Montgomery, and Warren Counties. The contribution shall be made to OPAE, which shall receive an administrative fee of \$25,000. The funds shall be available until expended for the benefit of the appropriate agencies within Duke Energy Ohio's service territory. Duke Energy Ohio and OPAE shall agree to the amount of distribution to each agency, program parameters, and reporting requirements.<sup>7</sup> For each of the two remaining calendar years of the ESP, Duke Energy Ohio agrees to provide \$325,000 annually to support low-income weatherization programs of OPAE member organizations, provided Duke Energy Ohio's ROE, as determined in its then most recent annual

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<sup>7</sup> The program parameters shall be substantially similar to the programs currently managed by OPAE for American Electric Power, The Dayton Power & Light Company, and FirstEnergy operating companies.

SEET review, exceeds 10 percent for the prior calendar year. Said funds will be provided from Duke Energy Corporation shareholders and shall be available to customers in Duke Energy Ohio's service territory on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer. The Duke Energy Community Partnership shall review the results of the program and make recommendations regarding continuation of the program as a part of Duke Energy Ohio's demand-side management portfolio.

- I. The Parties expressly agree that Duke Energy Ohio will continue to provide existing distribution reserve capacity at no charge for existing load for Greater Cincinnati Health Council (GCHC) member hospitals for the term of this ESP. Duke Energy Ohio agrees to consider similar reasonable arrangements for new hospital construction and/or expansion up to 4,000 kVa during the term of this ESP, provided the requesting hospital(s) and Duke Energy Ohio can reach agreement on appropriate compensation to Duke Energy Ohio if it is necessary to upgrade facilities for the purpose of (i) a secondary distribution service; and/or (ii) reserve capacity. Duke Energy Ohio agrees to meet with any requesting GCHC member hospitals to discuss Duke Energy Ohio's electric distribution system serving the member hospital, including but not limited to any system enhancements planned and the age and performance of the system. Also, for the term of the ESP, Duke Energy Ohio will work with GCHC member hospitals to understand and evaluate service quality concerns, particularly with regard to secondary feeders for reliability purposes, and to enhance communication between members and Duke Energy Ohio to facilitate better understanding of

overall service quality. Duke Energy Ohio and GCHC will hold meetings upon request to discuss, at least annually, any service quality or reliability concerns. Within 90 days of the approval of this Stipulation, Duke Energy Ohio will meet with GCHC to identify ways to leverage and better utilize Duke Energy Ohio's non-residential custom and prescriptive energy efficiency programs to benefit GCHC member hospitals.

For the term of the ESP, Duke Energy Ohio agrees to continue to compensate GCHC member hospitals that participate in PowerShare agreements consistent with the terms of the PowerShare program as approved by the Commission in Case No. 09-1999-EL-POR and any subsequent program approved by the Commission.

- J. For the term of the ESP, the Parties agree to establish, on a revenue neutral basis among all demand metered customer classes, a non-bypassable demand charge and non-bypassable energy credit designed to stabilize electric service by enhancing some of the benefits associated with high load factor customers under current rates. For customers served under Rates DS, DP, and TS, there will be a non-bypassable demand charge of \$8/kW per month and a non-bypassable energy credit of \$0.020961/kWh to produce net revenues of \$0 for Rates DS, DP, and TS as a group. The energy credit referred to in this paragraph is to be trued up quarterly to maintain net revenue neutrality.
- K. The University of Cincinnati (UC) operates a Commission-certified renewable energy generation facility at its Main Campus in Cincinnati (See Case No. 10-1382-EL-REN), which is not directly metered by Duke Energy Ohio. For the

term of this ESP, UC will establish for its Main Campus demand usage for rate purposes including for Rider ESSC (Section VII.A.) and the load factor adjustment (Section VII.J.) by using the 5 CP demand determinate established by PJM for purposes of assessing capacity costs. Until PJM establishes an actual demand determinate for PJM 2012/2013 planning year, which is anticipated to occur in October 2011, Duke Energy Ohio shall use 12,475 kW, which is the 5 CP demand factor for UC for the 2011/2012 PJM planning year. The commodity billing determinates for both Rider ESSC and the load factor adjustment shall be the kWh received by UC at its side of the substation.

- L. Council of Smaller Enterprises (COSE) and Duke Energy Ohio will work with small and mid-sized businesses in the Duke Energy Ohio service territory to educate such entities with respect to services provided by both Duke Energy Ohio and COSE related to energy efficiency during the term of this ESP.

To the extent such customers can provide energy savings as a result of implementing energy efficiency measures, Duke Energy Ohio will compensate COSE through its Commission-approved energy efficiency programs for services performed on behalf of the businesses that they work with, at a rate to be determined in the future and similar to the compensation rate paid to other vendors, provided the savings contribute to Duke Energy Ohio's mandated energy efficiency requirements.

COSE will participate in Duke Energy Ohio's Energy Efficiency Collaborative and provide its views and input with respect to the design of energy efficiency products and programs for small- and mid-sized businesses.

M. The Parties agree that, in the aggregate, the ESP as agreed to herein is better than the results that would be expected under a market rate offer (MRO) and that the ESP is consistent with and advances state policy, as set forth in R.C. 4928.02, as it:

- Is quantitatively better than the results expected under the MRO, as provided in Attachment D;
- Allows customers to benefit from a fully competitive market as soon as practicable;
- Encourages and supports the development of competitive retail markets in Ohio;
- Results in stability and certainty in respect of retail electric service;
- Provides for a stable electric distribution utility;
- Encourages the development of renewable resources in Ohio;
- Supports economic development;
- Provides low-income assistance;
- Ensures PIPP customers a discount from the SSO;
- Continues and expands the ability of retail electric consumers served by Duke Energy Ohio to choose from among CRES providers on a competitive basis;
- Expands wholesale competition;
- Mandates divestiture of Duke Energy Ohio's Generation Assets;



- Constitutes a State Regulatory Structural Change, within the meaning of Section 1.81 and Section C.3 of Schedule 8.1 of the PJM Reliability Assurance Agreement; and
- Allows Duke Energy Ohio to terminate its FRR plan due to such State Regulatory Structural Change, subject to any necessary governmental approvals, by providing notice of termination pursuant to Section C.3 of Schedule 8.1 of the PJM RAA at least two months prior to the May 2012 PJM Base Residual Auction.<sup>8</sup>

## **VIII. GENERATING ASSETS**

- A. The Parties agree that Duke Energy Ohio will transfer title, at net book value, to all of its Generation Assets out of Duke Energy Ohio. Such transfer shall occur on or before December 31, 2014, and Duke Energy Ohio commits to using its best commercial efforts to complete the transfer as soon as practicable upon its acceptance of a Commission order approving the Stipulation and upon receipt of necessary regulatory approvals. Staff, or an independent auditor at the Commission's discretion and with costs thereof to be recovered through Rider SCR, shall audit the terms and conditions of the transfer of the Generation Assets to ensure compliance with this Section VIII of the Stipulation and shall also audit Duke Energy Ohio's compliance with R.C. 4928.17 and the Commission's Corporate Separation Rule, O.A.C. 4901:1-37 and any successors to that rule, to ensure that no subsidiary or affiliate of Duke Energy Ohio that owns competitive generation assets has any competitive advantage due to its affiliation with Duke

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<sup>8</sup> The OCC supports the Stipulation. However, the OCC takes no position regarding Section VII.M., or does not support or oppose that paragraph, so that the OCC's support for the Stipulation may not be used as precedent in any other proceeding.

Energy Ohio. The Parties further expressly support Duke Energy Ohio's request for a waiver of the Commission's rule requirements, as set forth in O.A.C. 4901:1-37-09(B), (C), and (D), relating to the sale or transfer of generating assets. The Parties agree that approval of this Stipulation shall constitute the Commission consent required by paragraphs (A) and (E) of that rule, and that no hearing is required under paragraphs (D) and (E) of that rule. Further, the Parties agree that this paragraph provides the Commission Staff with access to books and records in compliance with paragraph (F) of that rule.

- B. Approval of this Stipulation will serve as the Commission's approval of full legal corporate separation (as contemplated by R.C. 4928.17(A) and also known as structural corporate separation) such that the transmission and distribution assets of Duke Energy Ohio will continue to be held by the distribution utility and all of Duke Energy Ohio's Generation Assets shall be transferred to an affiliate. Full legal corporate separation will be implemented as soon as reasonably possible after necessary regulatory approvals are obtained. Following the transfer of the Generation Assets, Duke Energy Ohio shall not without prior Commission approval: 1) provide or loan funds to; 2) provide any parental guarantee or other security for any financing for; and/or 3) assume any liability or responsibility for any obligation of subsidiaries or affiliates that own generating assets, provided however, that contractual obligations arising before the signing of the Stipulation shall be permitted to remain with Duke Energy Ohio without Commission approval for the remaining period of the contract but only to the extent that assuming or transferring such obligations is prohibited by the terms of the

contract or would result in substantially increased liabilities for Duke Energy Ohio if Duke Energy Ohio were to transfer such obligations to its subsidiary or affiliate. On and after the signing of this Stipulation, Duke Energy Ohio shall ensure that all new contractual obligations have a successor-in-interest clause that transfers all Duke Energy Ohio responsibilities and obligations under such contracts and relieves Duke Energy Ohio from any performance or liability under the contracts upon the transfer of the Generation Assets to its subsidiaries. This provision does not restrict Duke Energy Ohio's ability to receive and pass through to the subsidiary(ies) that own the Generation Assets equity contributions from its parent that are in support of the Generation Assets, nor does it restrict Duke Energy Ohio's ability to receive dividends from the subsidiary(ies) that own the Generation Assets and pass through such dividend(s) to its parent. Generation-related costs associated with implementing corporate separation shall not be recoverable from customers. Any subsidiary of Duke Energy Ohio to which Generation Assets are transferred shall not use or rely upon the rating(s) from credit rating agency(ies) for Duke Energy Ohio. If such subsidiary currently does not maintain separate rating(s) from the credit rating agency(ies), then upon transfer of any of the Generation Assets, it shall either seek to establish such rating(s) or shall tie its credit rating to Duke Energy Corp. as soon as practicable but no later than six months following such transfer.

- C. The Parties expressly agree that full legal corporate separation is in the public interest and, as such, will not intervene in the FERC proceeding to transfer Duke Energy Ohio's Generation Assets to contest, challenge, or in any way oppose the

transfer. Parties are not precluded from intervening in said FERC proceeding for purposes other than those prohibited by this paragraph.<sup>9</sup>

## **IX. MISCELLANEOUS**

- A. The Parties agree that Duke Energy Ohio shall implement Rider RECON as proposed in Duke Energy Ohio's Application and testimony filed in support thereof. The Parties further agree that Rider RECON shall terminate no later than two quarters after the filing of a final entry in the docket initiated by the Commission for purposes of conducting its final audit of Rider PTC-FPP.
- B. Effective January 1, 2012, Duke Energy Ohio shall implement an uncollectible expense rider, Rider UE-GEN, applicable to all retail jurisdictional customers including those taking generation service from a CRES provider, except for those customer accounts designated by CRES providers as not part of Duke Energy Ohio's Purchase of Accounts Receivable (PAR) Program. Rider UE-GEN shall be bypassable by dual-billed customer accounts and customer accounts designated by CRES providers as not part of the PAR Program, but shall be non-bypassable by all other retail customers, including SSO customers and customer accounts designated by CRES providers as part of the PAR Program. Accordingly, uncollectible expense generated by customer accounts of CRES providers that utilize dual billing and customer accounts of CRES providers that utilize consolidated billing but are not designated as part of the PAR program are excluded from Rider UE-GEN and, instead, remain the liability of said CRES provider. Rider UE-GEN will initially be set at zero in these proceedings. Duke

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<sup>9</sup> The OMA supports the Stipulation. However, the OMA takes no position regarding Section VIII.C., or does not support or oppose that paragraph, so that the OMA's support for the Stipulation may not be used as precedent in any other proceeding.

Energy Ohio's initial application to establish a rate for Rider UE-GEN shall be filed in conjunction with Duke Energy Ohio's UE-ED filing. Thereafter, Duke Energy Ohio will file annual applications to adjust Rider UE-GEN in conjunction with and governed by the same review process applicable to adjustments to Rider UE-ED as provided in the March 31, 2009, stipulation approved by the Commission in Case No. 08-709-EL-AIR, *et al.* As with Rider UE-ED, Duke Energy Ohio shall not accrue carrying charges on the monthly unrecovered uncollectible expense balances for which recovery is sought through Rider UE-GEN. Rider UE-GEN shall be in form set forth in Attachment E.

- C. After the effective date of Rider UE-GEN, Duke Energy Ohio shall purchase the customer accounts receivable of CRES providers that designate accounts to participate in the PAR Program at no discount and shall pay such CRES providers for such receivables no later than twentieth day of the month after the month in which the billing occurs. Paragraph 11.6 of Duke Energy Ohio's Supplier Tariff shall be amended as shown in Attachment E to memorialize this change to the PAR Program. Duke Energy Ohio agrees to amend any existing Account Receivables Purchase Agreements with CRES providers participating in the PAR Program to make them consistent with this Section IX.C. of the Stipulation.
- D. Duke Energy Ohio agrees to modify Section XI, Sheet No. 40.4, Paragraph 11.6, and Sheet 26.5, Paragraph 7.5, of its Certified Supplier Tariff and to modify Section III, Sheet No. 22.7, Section 4(d) and Section 10 of its Electric Tariff, and to make any other tariff modifications that are necessary to eliminate the

prohibition against customers enrolling in the PAR Program where such customers have outstanding arrears of more than \$50 or 30 days.

- E. CRES providers may designate which of their customer accounts will be billed using a dual billing method, which of their customer accounts will be billed using consolidated billing but with no purchase of receivables by Duke Energy Ohio, and which of their customer accounts will be billed using consolidated billing with purchase of receivables. Duke Energy Ohio will accommodate different methods of billing and collections by a CRES provider so long as alternative methods of billing and collection are distinguished as sub-accounts to PJM. The responsibility for, and PJM costs related to, creating a PJM sub account shall be that of the CRES providers.
- F. Duke Energy Ohio withdraws its proposed Rider PSM and Advance Southwest Ohio Fund, as well as the funding for same.
- G. The bid documents pursuant to which the auctions will be conducted are those attached as Attachments C through G of Duke Energy Ohio's Application, except as modified herein in Stipulation Attachments C, F, and G.
- H. Duke Energy Ohio withdraws its Rider DR as proposed in these proceedings. Within 45 days of an executed Stipulation in these proceedings, Duke Energy Ohio shall file, in a separate proceeding, for Commission approval of a distribution revenue decoupling mechanism that will adjust rates between rate cases to effectively remove Duke Energy Ohio's through-put incentive, with all parties retaining their rights to due process in such proceeding. The decoupling mechanism to be filed through such application shall not be applicable to Rates

TS, DS, and DP. Nothing in this Stipulation is intended, or shall be interpreted, to signify Parties' agreement with such application. Further, nothing in this Stipulation shall affect Duke Energy Ohio's existing SmartGrid recovery mechanism, which shall continue under Rider DR-IM.

- I. The Parties recommend that the Commission approve this settlement on or before November 15, 2011, so that Duke Energy Ohio may conduct, in December 2011, its first auction under the CBP for the procurement of supply necessary to serve its SSO load effective January 1, 2012.
- J. Duke Energy Ohio shall conduct collaborative meetings, on or before November 15, 2011, with all interested wholesale suppliers, retail suppliers, and transmission owners to confirm the charges from PJM that shall be paid by Duke Energy Ohio and the charges from PJM that shall be paid by CRES providers.
- K. Duke Energy Ohio shall be permitted to amend its certified supplier tariff, as proposed in its Application and testimony filed in support thereof, as modified herein.
- L. Duke Energy Ohio agrees to withdraw from these proceedings the proposed amendment to Section XIV.C. of its Third Amended Corporate Separation Plan that, if approved, would enable Duke Energy Ohio to provide Special Customer Services, as described in proposed Tariff 19, Sheet 23, Section 6. Duke Energy Ohio expressly reserves the right to seek revision of its Corporate Separation Plan to incorporate this proposal to provide Special Customer Services in a subsequent proceeding. Except as modified herein, Duke Energy Ohio shall be permitted to adopt its Third Amended Corporate Separation Plan, as proposed in its

Application and testimony filed in support thereof. The Parties also recognize that the Third Amended Corporate Separation Plan will be amended to identify additional affiliates and parties to agreements following the anticipated merger of Duke Energy Corporation and Progress Energy, Inc., and the Parties agree not to oppose such amendment. Within ninety days after the effective date of full legal corporate separation, Duke Energy Ohio agrees to file for approval of a Fourth Amended Corporate Separation Plan that will address any issues with the full legal corporate separation.

- M. The Parties agree that the SEET, as provided for under R.C. 4928.143(F), shall be administered to Duke Energy Ohio with an ROE threshold of 15 percent for the term of this ESP. The methodology for applying the SEET is outlined in Attachment H.
- N. During the term of this ESP, transmission voltage customers, whether shopping or non-shopping, with loads in excess of 10 MW at a single site shall have the option to annually nominate any part of their load as being subject to interruption through Duke Energy Ohio. Any such nomination shall have an effective date no earlier than June 1, 2012. For any customer electing to nominate load subject to interruption through Duke Energy Ohio, such load: (1) must be registered with PJM and abide by all of PJM's requirements for the demand response (DR) program chosen by the customer, by March 1 of the upcoming PJM planning year; (2) must not have been previously sold or committed to PJM or another party as a DR resource for the same planning year; and, (3) will have Duke Energy Ohio serve as its curtailment service provider (CSP). The customer



acknowledges that Duke Energy Ohio may use such interruptible load in Duke Energy Ohio's FRR plan and any capacity resource revenues associated with this DR resource will be credited to the economic competitiveness fund (Rider DR-ECF). The interruptible credit for load subject to interruption will be one half of the PJM Net Cost Of New Entry (CONE) on a \$/MW-day basis for the planning year in which the interruptible load is nominated (net CONE equals 2011/2012 = \$160.76, 2012/2013 = \$276.09, 2013/2014 = \$317.95, 2014/2015 = \$342.23 per MW-day). The maximum amount of interruptible load under this program shall be 250 MW in the DEOK zone. The amount of this interruptible credit shall be recoverable by Duke Energy Ohio through Rider DR-ECF. Duke Energy Ohio shall file a separate application to amend Rider DR-ECF.

- O. Duke Energy Ohio agrees to work with interested CRES providers and Commission Staff to jointly develop a secure, web-based system that will provide electronic access to key customer usage and account data that can be accessed via a secure, supplier website that presents the following data and information in a format that can be automatically retrieved, by the CRES provider authorized by the customer, subject to appropriate limitations reflecting legally mandated customer privacy issues, including compliance with protections addressed in the Ohio Administrative Code and specifically including but not limited to Rules 4901:1-10-29, 4901:1-10-24, O.A.C., and any successors to such Rules. The following data and information, in a format that can be automatically retrieved, will be the subject of the web-based system:

- Account Numbers

- Meter numbers
- Names
- Service Address, including zip codes
- Billing Address, including zip code
- Email address (if available)
- Meter Reading Cycle Dates
- Meter Types
- Indicator if Customer has an Interval Meter
- Rate Code Indicator
- Load Profile Group Indicators
- PLC and NSPL values (capacity and transmission obligations)
- 24 months of consumption data (in kWh) by billing period including
- 24 months of demand data (in kW)
- 24 months of interval data
- Indicator if SSO customer
- Identifier as to whether customer is participating in the Budget Billing Plan

Duke Energy Ohio shall use commercially reasonable efforts to add to the existing web system the Load Profile Group Indicators and the customer service addresses by March 1, 2012, but shall complete such additions no later than June 1, 2012. Duke Energy Ohio shall make a commercially reasonable effort to add the other items by June 1, 2013, but agrees to complete the additional data items no later than June 1, 2014, and will work with Commission Staff and interested

CRES providers to stage the implementation of various portions of this website, as possible. Additionally, Duke Energy Ohio shall add an indicator to the pre-enrollment list, noting whether a customer is an SSO customer or is shopping, by no later than June 1, 2012.

Duke Energy Ohio shall recover the actual costs to develop said web-based system, recovery not to exceed \$500,000, on a non-bypassable basis. Duke Energy Ohio shall be permitted to create a regulatory asset for purposes of recording said costs for future recovery through electric distribution rates. The carrying charge on said regulatory asset shall not exceed Duke Energy Ohio's long-term cost of debt from the then most recent distribution rate case (*e.g.*, Case No. 08-709-EL-AIR, *et al.*).

In addition, the following types of data would be provided via EDI transactions:

- 867 Historical Usage (HU) and Historical Interval (HI)
- 867 Monthly Usage (MU) and Monthly Interval (MI) data
- Network Service Peak Load (NSPL) and Peak Load Contribution (PLC) in 867HUs, 867HIs, and 814 Accepted Enrollment Responses
- Meter read cycle and load profile segment information to be in 867HUs no later than 12/31/12, as agreed to in the Ohio EDI Working Group – Change Control #82 (current rate code already included in 867HUs)

Duke Energy Ohio shall confirm that accounts requested together in the same EDI envelope come back together, unless there would be an unnecessary delay for a particular subset of accounts. Duke Energy Ohio shall make available,

upon request, a quarterly updated sync list to CRES providers on a confidential basis showing the accounts that are enrolled with the CRES provider. The list would contain information such as service start date, bill method, NSPL values, and PLC values. Duke Energy Ohio confirms that Validation, Error Detection, and Editing (VEE) rules and processes are now in place and will continue to be applied to raw meter read data before Duke Energy Ohio transmits such usage data to the CRES providers via EDI.

Effective January 1, 2012, Duke Energy Ohio shall increase the required interval meter threshold size requirement from 100kW to 200kW and will make such tariff changes as are necessary to accomplish this result.

Duke Energy Ohio agrees to conduct a collaborative process to discuss the deployment of an electric vehicle (EV) ecosystem that works in tandem with a competitive retail market, including, but not limited to customer education and additional billing system functionality to support various EV deployment programs and charging platforms. All interested persons shall be encouraged to participate in the EV collaborative process. The first such EV collaborative meeting shall occur in the first quarter of 2012 and continue to be held periodically, but not less often than three times a year for the first two years thereafter. At the conclusion of the EV collaborative process, the participants in the EV Collaborative shall prepare a report to the Commission discussing the progress of the collaborative and any recommended regulatory or legislative changes to facilitate the development of an EV ecosystem.

Duke Energy Ohio shall host annual meetings or conference calls with registered CRES providers to discuss supplier coordination issues affecting CRES providers, including but not limited to CRES consolidated billing.

- P. All energy efficiency programs and rebates shall be made available at the same terms and conditions to customers, regardless of whether they purchase generation service from a CRES provider or Duke Energy Ohio. Duke Energy Ohio shall maintain its policy to make SmartGrid meters and data available to all customers on a competitively neutral basis and without regard to their status as a shopping or non-shopping customer.
- Q. Duke Energy Ohio shall provide, from shareholder funds, a one-time economic development/energy efficiency grant of \$50,000 for Industrial Energy Users-Ohio to be distributed among its members.
- R. For the term of this ESP, Duke Energy Ohio will maintain its existing procedures contained in its tariff (*e.g.*, bulking of meters, power factor adjustments, demand ratchets) for metering and calculating billing determinants that are used in the calculation of retail bills.
- S. For the term of this ESP, Duke Energy Ohio will continue the retail Real Time Pricing Program (Rate RTP, Sheet No. 90). Current Customer Base Line (CBL) and Billing Demand History (BDH) values will continue for each customer taking service under RTP as of October 18, 2011, subject to the terms of Rate RTP, as modified to be consistent with this Stipulation.
- T. Duke Energy Ohio agrees to reduce its switching fee, as set forth in Rate CS, Sheet No. 52.2, of its Certified Supplier Tariff, from \$7.00 to \$5.00. Duke

Energy Ohio will make bill-ready billing functional and available as soon as commercially and reasonably practicable, but in no event later than September 30, 2013. In addition, Sheet 52.2 of the Certified Supplier Tariff shall be modified to reduce the per-bill charges for consolidated, bill-ready billing to 50 percent of the existing rate. Duke Energy Ohio agrees to continue its current practice of not imposing a per-bill charge for rate-ready consolidated billing services.

- U. Retail customers in Duke Energy Ohio's territory are permitted to participate in PJM DR programs including through Aggregators of Retail Customers (ARCs) or CSPs and the following conditions apply:
  - i. Duke Energy Ohio retail customer DR capacity may be utilized to satisfy either FRR or non-FRR capacity obligations (such as DR that clears in a PJM RPM auction);
  - ii. The Parties agree that any customer that is already receiving an incentive payment through a reasonable arrangement, including but not limited to EE/PDR, economic development arrangements, unique arrangements, and other special tariff schedules that offer service discounts from the applicable tariff rates and would currently or would like to participate in PJM programs must agree to commit to the electric distribution utility the peak demand response attributes that have cleared in the PJM market in a manner consistent with applicable statutes and rules at no cost to the utility for the duration of the arrangement. This provision shall not be interpreted as modifying the express specific terms of any agreement; and

- iii. Duke Energy Ohio may issue a request for proposal to meet its peak demand reduction mandates under Amended Sub. Senate Bill 221.
- V. The Parties agree that the “Summary of Riders Impacted by the ESP,” attached as Attachment I, provides an accurate recitation of Duke Energy Ohio’s riders for electric distribution, transmission, and generation service, effective January 1, 2012. In this regard, the Parties agree to the elimination Rider RTC (regulatory transition charge) and Rider DRI (distribution reliability investment), as said riders expired for all customers on December 31, 2010.
- W. Duke Energy Ohio shall make all applicable changes to customer or supplier tariffs and to all operational rules or procedures, in order to ensure compliance and consistency with all applicable provisions of this Stipulation.
- X. All Attachments to this Stipulation are incorporated herein and are an integral part of this Stipulation.
- Y. In the event the Commission approves Duke Energy Ohio’s next SSO, and Duke Energy Ohio does not withdraw the application therefor, for the period beginning June 1, 2015, by an order issued on or before March 1, 2015, the Parties agree that the Commission’s approval will function to demonstrate compliance with the requirement, under R.C. 4928.143(E), to compare the prospective results of the ESP detailed herein with the prospective results under the MRO provisions. Nothing in this paragraph shall be interpreted to limit Parties’ rights to object at any time, in whole or in part, to any proposal by Duke Energy Ohio regarding its next SSO.

Z. The Signatory Parties' agreement to this Stipulation, in its entirety, shall not be interpreted in a future proceeding before this Commission as their agreement to only an isolated provision of this Stipulation. The agreement of the Signatory Parties reflected in this document is expressly conditioned upon its acceptance in its entirety and without alteration by the Commission. The Signatory Parties agree that if the Commission or any court of competent jurisdiction rejects all or any material part of this Stipulation, or otherwise materially modifies its terms, all Signatory Parties agree to work in good faith with all other Signatory Parties to achieve a revised stipulation that substantially satisfies the intent of the original agreement or make such other agreements as may be necessary to maintain the economic benefit to each party that would have been achieved had the Stipulation not been so modified. Any such revised stipulation will be filed with the Commission for approval and all Signatory Parties agree to fully support such modifications or agreements. Should the Signatory Parties be unable to reach a modified agreement, any adversely affected Signatory Party shall have the right to file, in this docket and with service to all parties, an application for rehearing, a motion for reconsideration, or a notice withdrawing from the Stipulation.<sup>10</sup> Other Parties agree that they will not oppose or argue against any other Party's application for rehearing or motion for reconsideration that seeks to uphold the original, unmodified Stipulation. If such application or motion is filed, and if the Commission or court does not, on rehearing or reconsideration, accept the Stipulation without material modification within 45 days of the filing of such

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<sup>10</sup> Parties have the right, at their sole discretion, to determine what constitutes a "material" part for purposes of withdrawing from the Stipulation.



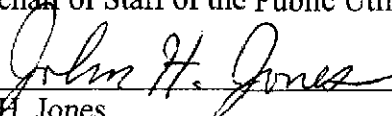
application or motion, then, within 30 days thereafter, the adversely affected Signatory Party may terminate its Signatory Party status without penalty or cost and regain its rights as a non-Signatory Party as if it had never executed the Stipulation by filing a notice with the Commission and the other Signatory Parties. Other Parties agree not to oppose a termination and withdrawal from the Stipulation by any other Party.

- AA. Unless the Signatory Party exercises its right to terminate its Signatory Party status as described above, each Signatory Party agrees to and will support the reasonableness of this ESP and this Stipulation before the Commission in these proceedings and to take no position contrary to the support for the reasonableness of the ESP and this Stipulation in any appeal from the Commission's adoption and/or enforcement of this ESP and this Stipulation. The Parties agree that testimony and related exhibits that support this Stipulation will be offered at a hearing, provided that such testimony and related exhibits may be used only for the purpose of the Commission's approval of this Stipulation. At any hearing and in any documents or briefs filed with the Commission in respect of the Stipulation, each Signatory Party agrees to support the Stipulation and to do nothing, directly or indirectly, to undermine the Stipulation or the Commission's approval of it, including through cross-examination or taking positions that are contrary to supporting the Commission's approval of the Stipulation without modification.
- BB. This Stipulation is submitted for purposes of these proceedings only and neither this Stipulation nor any Commission order considering this Stipulation shall be

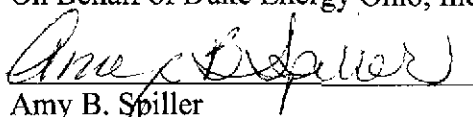
deemed binding in any other proceeding nor shall this Stipulation or any such Order be offered or relied upon by any Party in any proceedings except as necessary to enforce the terms of this Stipulation.

CC. This Stipulation contains the entire agreement between the Parties (including persons who belong to membership organizations that are Parties hereto) and no additional consideration with regard to the above-captioned proceedings has been promised or agreed to by any Party (including persons who belong to membership organizations that are Parties hereto).

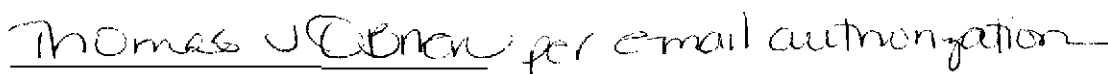
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On Behalf of the Kroger Company



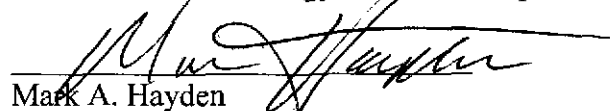
Mark S. Yurick, Esq.  
Zachary D. Kravitz, Esq.  
Chester, Wilcox & Saxbe, LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215-4213

On Behalf of Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.



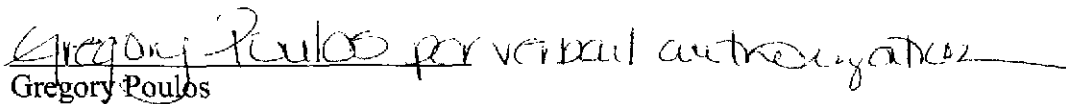
M. Howard Petricoff  
Michael J. Settineri  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O.Box 1008  
Columbus, Ohio 43216-1008

On Behalf of FirstEnergy Solutions Corp.



Mark A. Hayden  
FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308

On Behalf of EnerNOC, Inc.



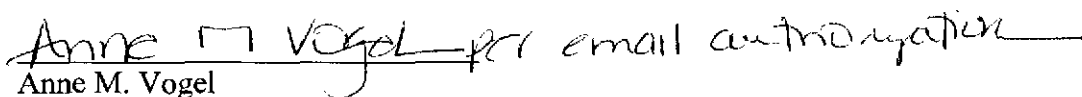
Gregory Poulos  
EnerNOC, Inc.  
101 Federal Street, Suite 1100  
Boston, MA 02110

On Behalf of Vectren Retail, LLC d/b/a/ Vectren Source



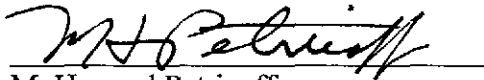
Joseph M. Clark  
Vectren Retail, LLC d/b/a Vectren Source  
6641 North High Street, Suite 200  
Worthington, OH 43085

On Behalf of AEP Retail Energy Partners LLC

 *per email authentication*

Anne M. Vogel  
American Electric Power Service  
Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus OH 43215

On Behalf of PJM Power Providers Group



M. Howard Petricoff  
Stephen Howard  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

On Behalf of Direct Energy Services, LLC, and Direct Energy Business, LLC



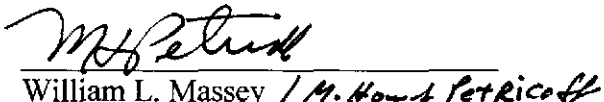
Dane Stinson  
Bailey Cavalieri LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215

On Behalf of Miami University and the University of Cincinnati



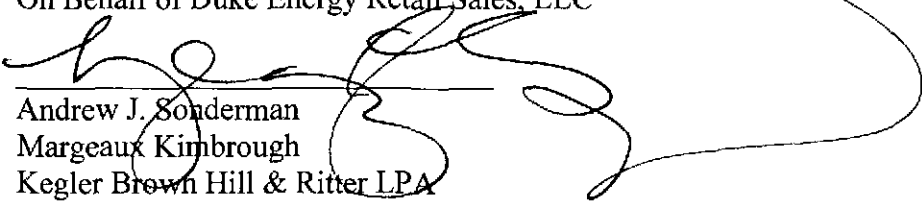
M. Howard Petricoff  
Special Assistant Attorney General  
Vorys, Sater, Seymour, and Pease, LLP  
52 East Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008

On Behalf of COMPETE Coalition

 */ M. Howard Petricoff*

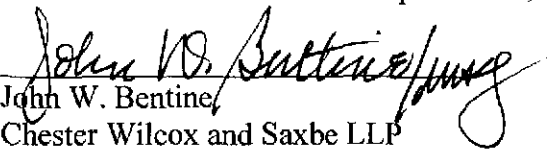
William L. Massey / M. Howard Petricoff  
Covington & Burling, LLP  
1201 Pennsylvania Ave., NW  
Washington, DC. 20004

On Behalf of Duke Energy Retail Sales, LLC




Andrew J. Sonderman  
Margeaux Kimbrough  
Kegler Brown Hill & Ritter LPA  
Capitol Square, Suite 1800  
65 East State Street  
Columbus, Ohio 43215

On Behalf of American Municipal Power, Inc.




John W. Bentine  
Chester Wilcox and Saxbe LLP  
65 East State Street, Suite 1000  
Columbus, Ohio 43215

On Behalf of Interstate Gas Supply, Inc.



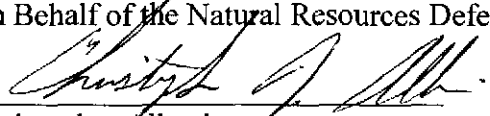
Vincent Parisi  
Matthew White  
Interstate Gas Supply, Inc  
6100 Emerald Parkway  
Dublin OH 43016

On Behalf of Exelon Generation Company, LLC



M. Howard Petricoff  
Lija Kaleps- Clark  
Vorys, Sater, Seymour, and Pease, LLP  
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Columbus, Ohio 43216-1008

On Behalf of the Natural Resources Defense Council



Christopher Allwein  
Williams, Allwein and Moser, LLC  
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Columbus, Ohio 43212

On Behalf of Wal-Mart Stores East, LP and Sam's East, Inc.

Richard Chamberlain per verbal authorization

Richard Chamberlain  
6 Northeast 63<sup>rd</sup> St, Suite 400  
Oklahoma City, OK 73105

On Behalf of Cincinnati Bell Inc.

Douglas E. Hart per verbal authorization

Douglas E. Hart  
441 Vine Street, Suite 4192  
Cincinnati, OH 45202

On Behalf of Council of Smaller Enterprises

Matthew R. Cox per verbal authorization

Matthew R. Cox  
McDonald Hopkins  
41 South High Street  
Suite 3550  
Columbus, OH 43215

The following parties in these proceedings take no position with regard to the Stipulation:

On Behalf of Columbus Southern Power Company and Ohio Power Company

Matthew Satterwhite per email authorization

Matthew Satterwhite  
Erin Miller  
American Electric Power Service Corporation  
1 Riverside Plaza, 29<sup>th</sup> Floor  
Columbus OH 43215

On Behalf of Dominion Retail, Inc.

Barth E. Royer per verbal authorization

Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, Ohio 43215-3927



# Attachment A

ESP Period 3 years and 5 months

Auction Date	Tranches	Delivery Period Beginning		
		1/1/2012 - 17 months	6/1/2013	6/1/2014
Auction 1	33	33		
Dec 2011	33	33	33	
	34	34	34	34
Auction 1	17		17	17
May 2012				
Auction 2	16		16	16
Nov 2012				
Auction 1	17			17
May 2013				
Auction 2	16			16
Nov 2013				
TOTAL TRANCHES		100	100	100

## PJM BRA dates

May-11 2014-2015

Duke Energy Ohio  
Methodology for Calculating Average Riders RC and RE (For Illustration Purposes Only)

	Month	Auction 1				Auction 2				Auction 3				Auction 4				Auction 5				Avg Auction Prices for Delivery Period						
		Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	33%	Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	34%	Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	17%	Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	16%	Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	17%	Jan 12-May 13	Jan 12-May 14	Jan 12-May 15	16%	Total <sup>(1)</sup>	RC <sup>(2)</sup>	RE
Auction 1	Dec 2011	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$62.70	\$4.11	\$58.59
	Jan 2012	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Feb	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Mar	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
Auction 2	Apr	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	May	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Jun	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Jul	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
Auction 3	Aug	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Sep	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Oct	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Nov	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
Auction 4	Dec	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Jan 2013	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Feb	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Mar	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
Auction 5	Apr	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	May	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		62.70	4.11	58.59
	Jun	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	\$68.59
	Jul	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
Auction 5	Aug	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Sep	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Oct	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Nov	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
Auction 5	Dec	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Jan 2014	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Feb	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Mar	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
Auction 5	Apr	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	May	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		71.04	2.45	68.59
	Jun	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	\$10.94	\$76.19
	Jul	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
Auction 5	Aug	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Sep	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Oct	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Nov	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
Auction 5	Dec	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Jan 2015	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Feb	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Mar	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
Auction 5	Apr	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	May	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Jun	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19
	Jul	\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		\$ XX	\$ XX	\$ XX		87.13	10.94	76.19

NOTE: <sup>(1)</sup> Auction prices are based on estimates of retail market prices, AT THE METER, from Judah Rose Exhibit W transformed from calendar year to delivery period.

Ultimate prices for each delivery period will be the weighted-average of all franchises auctioned for the applicable delivery period.

<sup>(2)</sup> Average capacity prices, AT THE METER, as calculated on Exhibit 1-B, page 2.

Duke Energy Ohio  
Convert Capacity and Energy Prices for Proposed Delivery Periods

Period	Methodology for Calculating Average Price for Rider RC				
	Underlying Capacity Price		Days in Period	Capacity Cost To Recover <sup>(3)</sup>	Projected MWh in Period <sup>(4)</sup>
	Demand <sup>(1)</sup>	FZCP <sup>(2)</sup>			
Jan '12 - May '12	4,732	\$116.16	152	\$88,980,437	8,533,333
Jun '12 - May '13	4,732	16.46	365	30,277,293	20,473,777
Jun '13 - May '14	4,732	27.73	365	51,007,857	20,810,354
Jun '14 - May '15	4,732	125.99	365	231,751,890	21,177,162
					Average Capacity Price <sup>(5)</sup>
					\$4.11
					2.45
					10.94

Note: <sup>(1)</sup> Reliability Obligation as reported to PJM. (Will need to update future years for any growth).

<sup>(2)</sup> PJM's Final Zonal Capacity Price. Prices shown for June 2012 through May 2015 are based on the results of the

Base Residual Auctions for those delivery periods.

<sup>(3)</sup> FZCP Prices are at load zone. Gross up by 6.5% for average T&D losses.

<sup>(4)</sup> Estimated MWh sales as shown in Attachment WDW-2.

<sup>(5)</sup> Assumes first delivery period is January 2012 through May 2014.

Calendar Year	Calculate Average Price for Rider RE	
	Mkt Price <sup>(1)</sup>	Avg Energy
Jan '12 - Dec '12	\$61.40	\$56.19
Jan '13 - Dec '13	66.30	64.35
Jan '14 - Dec '14	78.70	71.62
Jan '15 - Dec '15 <sup>(3)</sup>	90.40	79.46

Delivery Period	Price for Period	
	Wtd Energy <sup>(4)</sup>	Avg Cap
Jan '12 - May '13	\$58.59	\$4.11
Jun '13 - May '14	68.59	2.45
Jun '14 - May '15	76.19	10.94

<sup>(1)</sup> Total Projected Retail Market Price from JLR Testimony, Exhibit W. At the meter.

Figures in Exhibit W are in Calendar Year.

<sup>(2)</sup> Weighted average capacity price converted to average per MWh.

<sup>(3)</sup> ESP ends on May 31, 2015.

<sup>(4)</sup> Weighted by months of calendar year prices from Exhibit W in each delivery period.

Duke Energy Ohio  
Allocations of Capacity Costs for Rate Design - January 2012 - May 2013

No	Description	Allocation of Rider RC Revenue Requirement <sup>(1)</sup>		
		Percent of Total	Allocated \$	kWh Sales <sup>(2)</sup>
				Rate (¢/kWh) <sup>(3)</sup>
<i>Rate Schedule:</i>				
1	Residential (RS, TD, ORH)	39.12%	\$46,658,850	10,195,029,765
2	Electric Space Heating (EH)	0.47%	\$561,859	146,825,619
3	Secondary Distribution - Small (DM)	3.05%	\$3,638,480	785,510,905
4	Unmetered Small Fixed Load (GSFL, ADPL)	0.17%	\$200,728	44,017,767
5	Secondary Distribution (DS)	36.60%	\$43,648,928	9,390,338,772
6	Primary Distribution (DP)	9.66%	\$11,525,976	3,248,073,423
7	Transmission Voltage (TS)	10.33%	\$12,324,786	4,695,906,496
8	Lighting	0.59%	\$698,123	152,543,234
9	Total	100.00%	<b>\$119,257,730</b>	<b>28,658,245,981</b>

Note: <sup>(1)</sup> Rider RC is allocated in the following manner: First, the total amount is allocated to DP and TS based on 1 CP allocator. The allocation among all other classes is based on energy.

<sup>(2)</sup> Projected kWh sales for the period January 1, 2012, through May 31, 2013.

<sup>(3)</sup> Average Rider RC rates are shown for comparison only. The actual rates for each class are calculated on Exhibit 2 (Attachment B), page 2.

	January 2012 - May 2013			January 2012 - May 2013			June 2013-May 2014 <sup>(2)</sup>	June 2014-May 2015 <sup>(2)</sup>
	kWh; kW; kVA	Base Gen Revenue	% of Rate Group	Allocated Cap Cost	Allocated Revenue	Rates (\$/kWh; kW; kVA)	Rates (\$/kWh; kW; kVA)	Rates (\$/kWh; kW; kVA)
<b>Rate RS, Residential Service</b>				\$46,658,850				
Summer, First 1000 kWh	2,576,581,344	\$109,105,337	27.505%		\$12,833,698	\$0.004981	\$0.002969	\$0.013258
Summer, Additional kWh	1,327,367,209	74,684,316	18.828%		8,784,868	\$0.006818	\$0.003945	\$0.017617
Winter, First 1000 kWh	4,519,744,433	191,388,578	48.249%		22,512,402	\$0.004981	\$0.002969	\$0.013258
Winter, Additional kWh	1,624,472,012	15,871,092	4.001%		1,866,864	\$0.001149	\$0.000685	\$0.003059
<b>Rate ORH, Optional Residential Service</b>								
Summer, First 1000 kWh	1,101,570	\$42,522	0.011%		\$5,002	\$0.004541	\$0.002707	\$0.012086
Summer, Additional kWh	1,353,915	65,600	0.017%		7,718	\$0.005899	\$0.003397	\$0.015170
Summer, kWh greater than 150 times demand	370,589	17,956	0.005%		2,112	\$0.005899	\$0.003397	\$0.015170
Winter, First 1000 kWh	2,455,194	94,768	0.024%		11,147	\$0.004540	\$0.002706	\$0.012085
Winter, Additional kWh	3,973,169	58,203	0.015%		6,846	\$0.001723	\$0.001027	\$0.004587
Winter, kWh greater than 150 times demand	1,548,105	7,773	0.002%		914	\$0.000591	\$0.000352	\$0.001572
<b>Rate TD, Optional Time-of-Day Rate</b>								
Summer, On-Peak kWh	58,616	\$8,026	0.002%		\$709	\$0.012093	\$0.007208	\$0.032188
Summer, Off-Peak kWh	146,462	827	0.000%		97	\$0.000664	\$0.000396	\$0.001768
Winter, On-Peak kWh	83,280	6,536	0.002%		769	\$0.009232	\$0.005503	\$0.024573
Winter, Off-Peak kWh	270,376	1,528	0.000%		180	\$0.000665	\$0.000396	\$0.001769
<b>Rate CUR, (Rev. Class 01, 02, 04, 16 &amp; 18 only)</b>								
Summer, First 1000 kWh	29,075,378	\$1,294,930	0.326%		\$152,318	\$0.005239	\$0.003123	\$0.013944
Summer, Additional kWh	12,424,148	733,199	0.185%		86,244	\$0.006942	\$0.004138	\$0.018477
Winter, First 1000 kWh	67,530,351	3,007,599	0.758%		353,774	\$0.005239	\$0.003123	\$0.013944
Winter, Additional kWh	26,473,613	282,156	0.071%		33,189	\$0.001254	\$0.000747	\$0.003337
<b>Rate DS, Secondary Distribution Voltage</b>				\$43,648,928				
First 1000 kWh (\$ per kW)	27,649,575	\$238,159,617	58.704%		\$25,623,583	\$0.926726	\$0.552428	\$2.466760
Additional kWh (\$ per kW)	1,558,198	10,623,655	2.619%		1,142,999	\$0.733096	\$0.437004	\$1.951357
Billing Demand Times 300	7,357,051,038	144,801,479	35.692%		15,579,185	\$0.002118	\$0.001262	\$0.005637
Additional kWh	2,033,287,734	12,112,295	2.986%		1,303,161	\$0.000641	\$0.000382	\$0.001706
<b>Rate GS-FL, Optional Unmetered</b>				\$200,728				
kWh Greater Than or Equal to 540 Hours	43,169,346	\$2,947,042	98.041%		\$196,796	\$0.004559	\$0.002717	\$0.012134
kWh Less Than 540 Hours	88,295	6,993	0.233%		467	\$0.005289	\$0.003153	\$0.014078
<b>Rate SFL-ADPL, Optional Unmetered</b>								
All kWh	760,126	\$51,892	1.726%		\$3,465	\$0.004559	\$0.002717	\$0.012134
<b>Rate EH, Optional Electric Space Heating</b>				\$561,859				
All kWh	146,825,619	\$3,688,700	100.000%		\$561,859	\$0.003827	\$0.002281	\$0.010186
<b>Rate DM, Secondary Dist. Service, Small</b>				\$3,638,480				
Summer, First 2800 kWh	238,553,508	\$16,008,372	41.597%		\$1,513,485	\$0.006344	\$0.003782	\$0.016888
Summer, Next 3200 kWh	47,820,876	382,041	0.993%		36,119	\$0.000755	\$0.000450	\$0.002010
Summer, Additional kWh	10,015,181	(23,285)	-0.061%		(2,201)	\$0.000220	\$0.000131	\$0.000585
Winter, First 2800 kWh	427,316,388	21,741,612	56.494%		2,055,524	\$0.004810	\$0.002867	\$0.012804
Winter, Next 3200 kWh	50,840,723	406,119	1.055%		38,396	\$0.000755	\$0.000450	\$0.002010
Winter, Additional kWh	10,964,228	(30,065)	-0.078%		(2,842)	\$0.000259	\$0.000155	\$0.000690
<b>Rate DP, Service at Primary Dist. Voltage</b>				\$11,525,976				
First 1000 kWh (\$ per kW)	3,287,744	\$25,573,387	25.394%		\$2,926,934	\$0.890256	\$0.530688	\$2.369684
Additional kWh (\$ per kW)	4,022,054	24,679,725	24.507%		2,824,652	\$0.702291	\$0.418641	\$1.869358
Billing Demand Times 300	2,073,948,813	41,588,896	41.298%		4,759,946	\$0.002295	\$0.001368	\$0.006109
Additional kWh	1,174,124,610	8,863,467	8.801%		1,014,444	\$0.000864	\$0.000515	\$0.002300
<b>Rate TS, Service at Transmission Voltage</b>				\$12,324,786				
First 50,000 kVA (\$ per kVA)	6,188,130	\$58,352,211	50.574%		\$6,233,108	\$1.007268	\$0.600440	\$2.681147
Additional kVA (\$ per kVA)	2,703,572	18,377,803	15.928%		1,963,093	\$0.726111	\$0.432840	\$1.932762
Billing Demand Times 300	2,548,358,420	25,580,422	22.171%		2,732,468	\$0.001072	\$0.000639	\$0.002854
Additional kWh	2,147,548,076	13,069,978	11.328%		1,396,118	\$0.000650	\$0.000388	\$0.001730
<b>Rate TL, Traffic Lighting Service</b>				\$698,123				
All kWh	4,548,583	\$41,328	2.139%		\$14,932	\$0.003283	\$0.001957	\$0.008738
<b>Rate SL, Street Lighting Service</b>								
Rate OL, Outdoor Lighting Service	57,082,930	\$1,078,182	55.802%		\$389,565	\$0.006825	\$0.004068	\$0.018166
Rate NSU, Street Lighting	30,712,095	580,090	30.023%		209,596	\$0.006825	\$0.004068	\$0.018166
Rate NSP, Private Outdoor Lighting	1,478,824	27,932	1.446%		10,092	\$0.006825	\$0.004068	\$0.018166
Rate SE, Street Lighting Service	1,946,161	36,759	1.902%		13,282	\$0.006825	\$0.004068	\$0.018166
All kWh	7,699,591	145,430	7.527%		52,546	\$0.006825	\$0.004068	\$0.018166
<b>Rate SC, Street Lighting</b>								
Energy Only - All kWh	30,761,946	\$3,938	0.204%		\$1,423	\$0.000046	\$0.000028	\$0.000123
Units - All kWh	451,237	8,523	0.441%		3,079	\$0.006825	\$0.004068	\$0.018166
<b>Rate UOLS, Unmetered Outdoor Lighting</b>								
All kWh	17,861,867	\$9,985	0.517%		\$3,608	\$0.000202	\$0.000120	\$0.000538
<b>Totals</b>	<b>28,658,245,981</b>	<b>\$1,065,563,469</b>		<b>\$119,257,730</b>	<b>\$119,257,730</b>			
Average Capacity Price <u>AT THE METER</u> (\$/MWh) (From Exhibit 1 B, page 2)						<b>\$4.11</b>	<b>\$2.45</b>	<b>\$10.94</b>
							<b>59.6%</b>	<b>288.2%</b>
						Percent Change from 2012 Delivery Period		

Note: <sup>(1)</sup> Final figures will be adjusted for applicable transmission and distribution losses.<sup>(2)</sup> Changes in Rider RC rates from first delivery period to second and third is proportional to the average price of capacity for all load (as shown on Exhibit 1 B, page 2).

DUKE ENERGY OHIO  
ILLUSTRATIVE JAN 2012 - MAY 2015 RETAIL ENERGY RATES CONVERTED FROM AUCTION PRICE  
FOR DISCUSSION ONLY

	2012			January 1, 2012 - May 31, 2012			June 1, 2012 - May 31, 2013			June 1, 2013 - May 31, 2014			June 1, 2014 - May 31, 2015		
	kWh, kW, kVA	Base Gen + FPP @ 3.1¢/kWh (n)	% of Rate Group	Revenue Requirement	Allocated Revenue	Rates (\$/kWh, kW, kVA)	Revenue Requirement	Allocated Revenue	Rates (\$/kWh, kW, kVA)	Revenue Requirement	Allocated Revenue	Rates (\$/kWh, kW, kVA)	Revenue Requirement	Allocated Revenue	Rates (\$/kWh, kW, kVA)
<b>Rate RS, Residential Service</b>															
Summer, First 1000 kWh	1,817,099,832	\$133,275,187	26.526%	\$421,073,266	\$111,694,944	\$0.061469	\$492,955,453	\$130,762,592	\$0.071962	\$547,585,365	\$145,253,856	\$0.079937			
Summer, Additional kWh	936,108,126	81,689,476	16.259%		68,462,117	0.073135		\$89,031,662	0.095108						
Winter, First 1000 kWh	3,187,489,838	233,786,442	46.531%		195,931,172	0.061469		\$254,798,984	0.079937						
Winter, Additional kWh	1,145,637,349	46,707,635	9.296%		39,144,621	0.034168		\$50,905,680	0.044434						
<b>Rate ORH, Optional Residential Service</b>															
Summer, First 1000 kWh	728,227	\$50,685	0.010%		\$42,478	\$0.058331		\$49,729	\$0.068288		\$55,241	\$0.075856			
Summer, Additional kWh	895,048	71,113	0.014%		59,599	0.066587		\$69,773	0.077954						
Summer, kWh greater than 150 times demand	244,990	19,465	0.004%		16,313	0.066586		\$19,098	0.077953						
Winter, First 1000 kWh	1,623,082	112,965	0.022%		94,673	0.058329		\$110,835	0.068287						
Winter, Additional kWh	2,626,587	119,901	0.024%		100,487	0.038257		\$117,641	0.047788						
Winter, kWh greater than 150 times demand	1,023,423	36,865	0.007%		30,896	0.030189		\$36,170	0.035342						
<b>Rate TD, Optional Time-of-Day Rate</b>															
Summer, On-Peak kWh	40,788	\$5,458	0.001%		\$4,575	\$0.112155		\$5,356	\$0.131302		\$5,949	\$0.145853			
Summer, Off-Peak kWh	101,916	3,734	0.001%		3,130	0.030709		\$3,664	0.035951						
Winter, On-Peak kWh	57,950	6,344	0.001%		5,317	0.091754		\$6,225	0.107417						
Winter, Off-Peak kWh	188,142	6,895	0.001%		5,779	0.030716		\$6,765	0.035959						
<b>Rate CUR, (Rev. Class 01, 02, 04, 16 &amp; 18 only)</b>															
Summer, First 1000 kWh	19,963,145	\$1,507,956	0.300%		\$1,283,784	\$0.063306		\$1,479,527	\$0.074113		\$1,643,490	\$0.082326			
Summer, Additional kWh	8,530,416	767,857	0.153%		643,524	0.076439		\$753,381	0.088317						
Winter, First 1000 kWh	46,366,316	3,502,373	0.697%		2,995,260	0.063306		\$3,436,344	0.074113						
Winter, Additional kWh	18,176,774	757,208	0.151%		634,599	0.034913		\$742,933	0.040873						
<b>Rate DM, Secondary Dist. Service, Small</b>															
Summer, First 2800 kWh	170,200,688	\$16,697,707	37.246%	\$32,835,499	\$12,229,826	\$0.071855	\$38,440,907	\$14,317,602	\$0.084122	\$42,700,974	\$15,904,296	\$0.093444			
Summer, Next 3200 kWh	34,118,740	1,330,256	2.967%		974,313	0.028557		\$1,140,640	0.033431						
Summer, Additional kWh	7,145,527	204,898	0.457%		150,073	0.021002		\$175,692	0.024588						
Winter, First 2800 kWh	304,877,239	24,963,043	55.682%		18,283,569	0.059970		\$21,404,791	0.070208						
Winter, Next 3200 kWh	36,273,309	1,414,224	3.155%		1,035,813	0.028556		\$1,212,639	0.033431						
Winter, Additional kWh	7,822,643	221,052	0.493%		161,904	0.020697		\$189,543	0.024230						
<b>Rate TS, Service at Transmission Voltage</b>															
<b>All Other Rate Classes</b>															
All kWh						\$0.058589					\$0.068591				\$0.076182
Totals				\$453,908,765	\$453,908,765		\$531,396,361	\$531,396,361		\$590,286,329	\$590,286,329				\$0.076182
Retail Energy Price AT THE METER from Exhibit 1 B, page 2															

Note: <sup>(1)</sup> For purposes of allocated retail energy price among rate blocks for these customer classes, use total base generation revenue plus fuel (PTC-BG + PTC-FPP).  
Fuel rate is the Q4 2011 rate for PTC-FPP, excluding reconciliation adjustments.

DUKE ENERGY OHIO  
CALCULATION OF LOAD FACTOR ADJUSTMENT RIDER (LFA)

	Allocations from JRB-1			Rates for January 2012 - May 2014 <sup>(1)</sup>	
	kWh; kW; kVA	2010	Base Gen Revenue	% of Rate Group	
<b>Rate DS, Secondary Distribution Voltage</b>					
First 1,000 kW (\$ per kW)	19,796,503		\$170,517,176	58.704%	\$8.00
Additional kW (\$ per kW)	1,116,309		\$7,606,309	2.619%	\$8.00
Billing Demand Times 300	5,267,490,696		\$103,674,752	35.692%	-\$0.020961
Additional kWh	1,455,790,393		\$8,672,143	2.986%	-\$0.020961
					\$167,302,497
<b>Rate DP, Service at Primary Dist. Voltage</b>					
First 1,000 kW (\$ per kW)	2,382,401		\$18,531,268	25.394%	\$8.00
Additional kW (\$ per kW)	2,914,505		\$17,883,692	24.507%	\$8.00
Billing Demand Times 300	1,502,847,469		\$30,136,600	41.298%	-\$0.020961
Additional kWh	850,807,016		\$6,422,742	8.801%	-\$0.020961
					\$42,375,245
<b>Rate TS, Service at Transmission Voltage</b>					
First 50,000 kVA (\$ per kVA)	4,400,833		\$41,498,535	50.574%	\$8.00
Additional kVA (\$ per kVA)	1,922,708		\$13,069,803	15.928%	\$8.00
Billing Demand Times 300	1,812,324,514		\$18,192,113	22.171%	-\$0.020961
Additional kWh	1,527,276,893		\$9,295,019	11.328%	-\$0.020961
					\$50,588,332
<b>Total (kWh)</b>	<b>12,416,538,981</b>		<b>\$445,500,152</b>		<b>\$260,266,074</b>
					<b>-\$260,263,074</b>

Note: <sup>(1)</sup> Energy credit will be true-up to ensure the total revenue collected from demand charge and energy credits equal \$0.

Duke Energy Ohio  
Allocation of ESSC Revenue Requirement

Line No	Description	Allocation of Rider ESSC Revenue Requirement <sup>(1)</sup>		
		Percent of Total	Allocated \$	Annual kWh <sup>(3)</sup>
				Rate (¢/kWh) <sup>(4)</sup>
1	Residential (RS, TD, ORH)	41.90%	\$46,095,319	7,186,901,948
2	Electric Space Heating (EH)	0.21%	233,456	86,543,565
3	Secondary Distribution - Small (DM)	2.99%	3,286,029	560,438,126
4	Unmetered Small Fixed Load (GSFL, ADPL)	0.14%	149,575	30,918,310
5	Secondary Distribution (DS)	32.09%	35,303,352	6,723,281,089
6	Primary Distribution (DP)	10.83%	11,908,440	2,353,654,485
7	Transmission Voltage (TS)	11.58%	12,733,756	3,339,603,407
8	Lighting	0.26%	290,074	107,532,461
9	Total	100.00%	\$110,000,000 <sup>(2)</sup>	20,388,873,391

Notes: <sup>(1)</sup> Annual ESSC Revenue Requirement as agreed to in the Stipulation.

<sup>(2)</sup> Average Rider ESSC rates are shown for comparison purposes only. Actual rates for each rate class are shown on page 2 of Exhibit 1 (Attachment B-1).

<sup>(3)</sup> Projected kWh sales for the period January 1, 2012, through December 31, 2012.

<sup>(4)</sup> The annual ESSC Revenue Requirement is allocated in the following manner. First, Residential, Electric Space Heating and Lighting are allocated a share of the total ESSC revenue requirement based on an average of 1 CP and energy. The balance of the ESSC revenue requirement not allocated to Residential, Electric Space Heating, and Lighting, is allocated among the remaining rate classes based on 1 CP.



Duke Energy Ohio  
ESSC Revenue Requirement for Rate Design  
Illustrative for Discussion Purposes Only

	2012			Calculation of Rider ESSC Price for January 2012 - December 2012			Jan 2013-Dec 2013 <sup>1</sup>	Jan 2014-Dec 2014 <sup>2</sup>
	kWh; kW; kVA	Base Revenue	% of Rate Group	ESSC Revenue Requirement	Allocated Revenue	Rates (\$/kWh; kW; kVA)	Rates (\$/kWh; kW; kVA)	Rates (\$/kWh; kW; kVA)
<b>Rate RS, Residential Service</b>				\$46,095,319				
Summer, First 1000 kWh	1,817,099,832	\$76,945,092	27.518%		\$12,683,771	\$0.006980	\$0.006980	\$0.006980
Summer, Additional kWh	936,108,126	52,670,124	18.835%		8,682,240	\$0.009275	\$0.009275	\$0.009275
Winter, First 1000 kWh	3,187,489,838	134,974,257	48.268%		22,249,406	\$0.006980	\$0.006980	\$0.006980
Winter, Additional kWh	1,145,637,349	11,192,877	4.003%		1,845,055	\$0.001611	\$0.001611	\$0.001611
<b>Rate ORH, Optional Residential Service</b>								
Summer, First 1000 kWh	728,227	\$28,110	0.010%		\$4,834	\$0.006363	\$0.006363	\$0.006363
Summer, Additional kWh	895,048	43,367	0.016%		7,149	\$0.007987	\$0.007987	\$0.007987
Summer, kWh greater than 150 times demand	244,990	11,870	0.004%		1,957	\$0.007987	\$0.007987	\$0.007987
Winter, First 1000 kWh	1,623,082	62,649	0.022%		10,327	\$0.006363	\$0.006363	\$0.006363
Winter, Additional kWh	2,626,587	38,477	0.014%		6,343	\$0.002415	\$0.002415	\$0.002415
Winter, kWh greater than 150 times demand	1,023,423	5,139	0.002%		847	\$0.000828	\$0.000828	\$0.000828
<b>Rate TD, Optional Time-of-Day Rate</b>								
Summer, On-Peak kWh	40,788	\$4,194	0.001%		\$691	\$0.016950	\$0.016950	\$0.016950
Summer, Off-Peak kWh	101,916	575	0.000%		95	\$0.000930	\$0.000930	\$0.000930
Winter, On-Peak kWh	57,950	4,548	0.002%		750	\$0.012937	\$0.012937	\$0.012937
Winter, Off-Peak kWh	188,142	1,063	0.000%		175	\$0.000931	\$0.000931	\$0.000931
<b>Rate CUR, (Rev. Class 01, 02, 04, 16 &amp; 18 only)</b>								
Summer, First 1000 kWh	19,963,145	\$889,099	0.318%		\$146,561	\$0.007342	\$0.007342	\$0.007342
Summer, Additional kWh	8,530,416	503,414	0.180%		82,984	\$0.009728	\$0.009728	\$0.009728
Winter, First 1000 kWh	46,366,316	2,065,017	0.738%		340,401	\$0.007342	\$0.007342	\$0.007342
Winter, Additional kWh	18,176,774	193,728	0.069%		31,934	\$0.001757	\$0.001757	\$0.001757
<b>Rate DS, Secondary Distribution Voltage</b>				\$35,303,352				
First 1000 kWh (\$ per kW)	19,796,503	\$170,517,176	58.704%		\$20,724,412	\$1.046872	\$1.046872	\$1.046872
Additional kW (\$ per kW)	1,116,309	7,606,309	2.619%		924,480	\$0.828139	\$0.828139	\$0.828139
Billing Demand Times 300	5,267,490,696	103,674,752	35.692%		12,600,480	\$0.002392	\$0.002392	\$0.002392
Additional kWh	1,455,790,393	8,672,143	2.968%		1,054,000	\$0.000724	\$0.000724	\$0.000724
<b>Rate GS-FL, Optional Unmetered</b>				\$149,575				
kWh Greater Than or Equal to 540 Hours	30,320,485	\$2,069,889	98.035%		\$146,636	\$0.004836	\$0.004836	\$0.004836
kWh Less Than 540 Hours	62,015	4,912	0.233%		348	\$0.005611	\$0.005611	\$0.005611
<b>Rate SFL-ADPL, Optional Unmetered</b>								
All kWh	535,810	\$36,578	1.732%		\$2,591	\$0.004836	\$0.004836	\$0.004836
<b>Rate EH, Optional Electric Space Heating</b>				\$233,456				
All kWh	88,543,565	\$2,174,234	100.000%		\$233,456	\$0.002698	\$0.002698	\$0.002698
<b>Rate DM, Secondary Dist. Service, Small</b>				\$3,286,029				
Summer, First 2800 kWh	170,200,668	\$11,421,486	41.597%		\$1,366,883	\$0.008031	\$0.008031	\$0.008031
Summer, Next 3200 kWh	34,118,740	272,575	0.993%		32,621	\$0.000956	\$0.000956	\$0.000956
Summer, Additional kWh	7,145,527	(16,613)	-0.061%		(1,988)	\$0.000278	\$0.000278	\$0.000278
Winter, First 2800 kWh	304,877,239	15,511,849	58.494%		1,856,404	\$0.006089	\$0.006089	\$0.006089
Winter, Next 3200 kWh	36,273,309	289,751	1.055%		34,676	\$0.000956	\$0.000956	\$0.000956
Winter, Additional kWh	7,822,643	(21,450)	-0.078%		(2,567)	\$0.000328	\$0.000328	\$0.000328
<b>Rate DP, Service at Primary Dist. Voltage</b>				\$11,908,440				
First 1000 kWh (\$ per kW)	2,382,401	\$18,531,268	25.394%		\$3,024,058	\$1.269332	\$1.269332	\$1.269332
Additional kW (\$ per kW)	2,914,505	17,883,692	24.507%		2,818,382	\$1.001330	\$1.001330	\$1.001330
Billing Demand Times 300	1,502,847,469	30,136,600	41.298%		4,917,894	\$0.003272	\$0.003272	\$0.003272
Additional kWh	850,807,016	6,422,742	8.801%		1,048,106	\$0.001232	\$0.001232	\$0.001232
<b>Rate TS, Service at Transmission Voltage</b>				\$12,733,758				
First 50,000 kVA (\$ per kVA)	4,400,833	\$41,498,535	50.574%		\$6,439,989	\$1.463345	\$1.463345	\$1.463345
Additional kVA (\$ per kVA)	1,922,708	13,069,803	15.928%		2,028,234	\$1.054884	\$1.054884	\$1.054884
Billing Demand Times 300	1,812,324,514	18,192,113	22.171%		2,823,138	\$0.001558	\$0.001558	\$0.001558
Additional kWh	1,527,278,893	9,295,019	11.328%		1,442,445	\$0.000944	\$0.000944	\$0.000944
<b>Rate TL, Traffic Lighting Service</b>				\$290,074				
All kWh	3,192,189	\$29,004	2.081%		\$6,036	\$0.001891	\$0.001891	\$0.001891
<b>Rate SL, Street Lighting Service</b>								
Rate OL, Outdoor Lighting Service	41,743,673	\$788,454	56.565%		\$164,081	\$0.003931	\$0.003931	\$0.003931
Rate NSU, Street Lighting	21,512,921	406,336	29.151%		84,560	\$0.003931	\$0.003931	\$0.003931
Rate NSP, Private Outdoor Lighting	1,093,169	20,648	1.481%		4,297	\$0.003931	\$0.003931	\$0.003931
Rate SE, Street Lighting Service	1,360,791	25,703	1.844%		5,349	\$0.003931	\$0.003931	\$0.003931
All kWh	5,764,110	108,873	7.811%		22,657	\$0.003931	\$0.003931	\$0.003931
<b>Rate SC, Street Lighting</b>								
Energy Only - All kWh	21,608,323	\$2,766	0.198%		\$576	\$0.000027	\$0.000027	\$0.000027
Units - All kWh	316,965	5,987	0.430%		1,246	\$0.003931	\$0.003931	\$0.003931
<b>Rate UOLS, Unmetered Outdoor Lighting</b>								
All kWh	10,940,320	\$6,116	0.439%		\$1,273	\$0.000116	\$0.000116	\$0.000116
<b>Totals</b>	20,388,873,391	\$758,270,849		\$110,000,000	\$110,000,000	100%	100%	100%

Duke Energy Ohio  
Allocation Factors for Rider ESSC and Rider RC

Line No	Description	1 CP Allocation <sup>(1)</sup>		kWh Sales		1 CP & Energy for RS, EH, Lighting; 1 CP for All Others <sup>(2)</sup>		1 CP for DP and TS, All Others on Energy <sup>(3)</sup>	
		1 CP	% of Total	Energy	% of Total	Energy	% of Total	Energy	% of Total
		(a)	(b)	(c)	(d)	(e)	(f)		
<i>Rate Schedule:</i>									
1	Residential (RS, TD, ORH)	2,065,765	48.56%	7,186,901,948	35.25%				39.12%
2	Electric Space Heating (EH)	-	0.00%	86,543,565	0.42%		41.90%		0.47%
3	Secondary Distribution - Small (DM)	113,450	2.67%	560,438,126	2.75%				3.05%
4	Unmetered Small Fixed Load (GSFL, ADPL)	5,164	0.12%	30,918,310	0.15%				0.17%
5	Secondary Distribution (DS)	1,218,849	28.65%	6,723,281,089	32.98%				36.60%
6	Primary Distribution (DP)	411,139	9.66%	2,353,654,485	11.54%				9.66%
7	Transmission Voltage (TS)	439,633	10.33%	3,339,603,407	16.38%				10.33%
8	Lighting	-	0.00%	107,532,461	0.53%				0.59%
9	Total	4,254,000	100.00%	20,388,873,391	100.00%		100.00%		100.00%

Notes: <sup>(1)</sup> Per Duke Energy Ohio load research data.

<sup>(2)</sup> Allocate first to all customers on average of 1 CP and energy (kWh sales). Then allocate among non-Residential based on 1 CP.

<sup>(3)</sup> Allocate DP and TS using 1 CP. Then allocate among all remaining classes on energy.

## **Attachment C**

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

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## 1. INTRODUCTION

These Bidding Rules apply to the competitive bidding process ("CBP") auctions for Duke Energy Ohio to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for all of their retail customers that take retail generation from Duke Energy Ohio.

Bidders also need to be familiar with other documents for the auctions including the Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"), the Part 1 Application, the Part 2 Application, the Communications Protocols, and the Glossary. Bidders also should visit the Information Website regularly for up-to-date information including information specific to each auction.

The URL for the Information Website is <http://www.duke-energyohiocbp.com>. It contains relevant data, the schedule and key dates for participating in the auction process, frequently asked questions, and other information.

Unless noted otherwise, "days" refer to business days and times refer to prevailing Eastern Time. Unless noted otherwise, all capitalized terms are defined in the Glossary found on the Information Website.

Examples in these Bidding Rules are illustrative only.

These Bidding Rules may be modified from time to time by the Auction Manager in order: (i) to facilitate a more competitive process, (ii) to make any necessary corrections and/or clarifications, (iii) to account for any change in ESP products, (iv) to conform to any change in state or federal law or rule, and (v) for any other reason deemed necessary at the discretion of the Auction Manager. Such modifications will be carried out in consultation with Duke Energy Ohio but without prior consent from the Public Utilities Commission of Ohio ("PUCO") or any past, current, or potential bidder and will be posted to the Information Website.

## **1.1 Auction Manager**

The Auction Manager is CRA International d/b/a Charles River Associates, Inc. The Auction Manager can be contacted by sending an email to [duke-energyauctionmanager@crai.com](mailto:duke-energyauctionmanager@crai.com). The full contact information for the Auction Manager is as follows:

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

## **2. THE PRODUCTS BEING PROCURED**

This section summarizes the common elements of the products to be procured in the auctions. The Information Website provides details about the products to be procured in a specific auction, including the delivery periods, the number of tranches, the nominal MW size of the tranches, and the seasonal price factors.

### **2.1 SSO Load**

Standard Service Offer ("SSO") Load will be Duke Energy Ohio's full electricity requirements for SSO Service for SSO Customers and it will include distribution losses. For purposes of these Bidding Rules, an "SSO Customer" means residential customers, commercial customers, and industrial customers and lighting customers, including special contract customers taking SSO supply during the delivery period but excluding PIPP customers and interruptible service customers taking SSO supply from Duke Energy Ohio during the delivery period until either PJM or Duke Energy Ohio calls for interruption. SSO Load will exclude the requirements of customers served by Competitive Retail Electric Service suppliers ("CRES Suppliers"). CRES Suppliers are certified by the PUCO and serve shopping customers.

SSO Load will also exclude the requirements of customers served via the Percentage of Income Payment Plan ("PIPP Customers") and interruptible service customers taking SSO supply from Duke Energy Ohio during the delivery period until either PJM or Duke Energy Ohio calls for interruption.. For purposes of the CBP auctions, a PIPP Customer is defined as any customer who takes service under Duke Energy Ohio's percentage of income payment plan as of January 1, 2012 and any customer who is thereafter enrolled in the PIPP program through May 31, 2015. SSO Load will include the requirements of any Special Contract customers of Duke Energy Ohio who are served under special contracts.

## **2.2 Full Requirements Service**

The auctions are designed to procure all elements of full requirements service for SSO Customers of Duke Energy Ohio. Winning bidders will assume all responsibilities of a Load Serving Entity ("LSE") and will be responsible for supplying all obligations associated with full requirements service. Full requirements service includes energy, capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio. While Duke Energy Ohio is an FRR entity, it will continue to supply the capacity resources, all other responsibilities related to the full requirements service will be the responsibility of bidders.

Duke Energy Ohio also will provide distribution services and will be responsible for Network Integrated Transmission Services ("NITS") charges and for other non-market-based FERC approved transmission charges for shopping and non-shopping load.

Full requirements service and the LSE obligations of winning bidders are defined in the Master SSO Supply Agreement.

## **2.3 Tranches**

SSO Load will be divided into identical units called tranches, each representing an equivalent percentage of SSO Load. Each tranche represents one percent (1%) of the actual hourly energy required for SSO Load for the applicable delivery period.

The number of tranches intended to be procured for each product in the auction is referred to as the "tranche target" for that product. The Auction Manager may reduce the tranche targets prior to the auction if indications of interest in the auction are such that doing so is required to promote more competitive bidding.



### 3. PRICES PAID TO SSO SUPPLIERS

The payment to SSO Suppliers for tranches won will be a seasonal function of the auction prices. The summer payment for a tranche, paid to the winning bidder of the tranche from June 1 through September 30 during each year of the applicable delivery period, will be higher than the winning price for that tranche. The winter payment for the same tranche, paid to the winning bidder of that tranche for the remaining months in the calendar year during each year of the applicable delivery period, will be lower than the winning price for that tranche. The seasonal factors are multiplied by the winning price for a tranche in determining the summer and winter payments for that tranche. Duke Energy Ohio reserves the right to calculate the seasonal factors in advance of each auction in response to changing market conditions. The seasonal factors will be announced to suppliers prior to the auction and will be constant during the duration of the Master SSO Supply Agreement.

#### Example 1. Seasonal Supplier Payments

Assume the summer factor is 1.0727 and the winter factor is 0.9580, and the delivery period is June 1, 2013 through May 31, 2015.

Assume a bidder in the auction wins three (3) 24-month tranches at a price of \$60.00/MWh. The size of each tranche is 1% of the SSO Load. Thus, the bidder will serve 3% of the SSO Load from June 1, 2013 through May 31, 2015. The bidder will receive \$64.36 ( $\$60.00 \times 1.0727$ ) for each MWh of SSO Load served in the summer months and \$57.48 ( $\$60.00 \times 0.9580$ ) for each MWh of SSO Load served in the winter months.

## **4. PRIOR TO THE START OF BIDDING**

### **4.1 Information Provided to Bidders**

Duke Energy Ohio will make available certain information to suppliers in advance of qualification. This information will be posted on the Information Website.

#### **4.1.1 Load Data**

Duke Energy Ohio will provide:

- Load data for a historical three-year period.
- Historical hourly load data for total retail load and SSO Load.
- Historical switching statistics and historical load profiles.
- Customer counts, peak demand and NSPL for eligible and SSO load by customer class
- Monthly information specific to municipal opt-out aggregation programs that includes peak load and number of accounts for existing programs and programs that are proposed for commencement during the term of an SSO.
- Monthly consumption information specific to the PIPP load that includes estimates of peak load, hourly consumption, and number of accounts.
- Monthly information specific to voltage customers with loads in excess of 10MW at a single site that includes peak load, hourly consumption, and number of accounts.
- For the larger nonresidential customer base, a distribution of the number of customers above and below 500kW within a rate class.
- Above information provided in a useable or active electronic format such as Excel where possible.

#### **4.1.2 Minimum and Maximum Starting Prices**

The Auction Manager will announce a minimum starting price and a maximum starting price for each product in the auction. The minimum and maximum starting prices establish the range for the possible round 1 prices for the auction.

#### 4.1.3 Tranche Size, Tranche Target

No later than eight (8) days prior to the Part 1 Application Due Date, the Auction Manager will announce for each product in the auction:

- The tranche target or the number of tranches being procured.
- The size (%) and MW-measure of the tranches in the auction.

No later than four (4) days prior to the Part 2 Application Due Date, the Auction Manager will announce:

- Any update to the MW-measure of the tranches in the auction.

## **4.2 Qualification Process**

There are two parts to the application process. In Part 1, prospective bidders apply to become Qualified Bidders. In Part 2, each Qualified Bidder provides certifications and its indicative offer and pre-bid security in order to become a Registered Bidder.

### **4.2.1 Part 1 Application: Certifications and Other Qualified Bidder Requirements**

In the Part 1 Application process, prospective bidders will be required to:

- Submit an application from a person with the power to bind the bidder.
- Agree to comply with all rules of the auction.
- Agree that if they become winning bidders, they will execute the Master SSO Supply Agreement with Duke Energy Ohio within 3 business days following the close of the auction.
- Show either that they are a PJM Market Participant and Load Serving Entity in PJM, or that there exist no impediments to them becoming a PJM Market Participant and Load Serving Entity in PJM by the start of the applicable delivery period.
- Agree that if they become winning bidders, they will comply with the creditworthiness requirements set forth in the Master SSO Supply Agreement.
- Certify that if they qualify to participate, they will not disclose information regarding the list of Qualified Bidders or confidential information that may be obtained during the bidding process about Qualified Bidders.
- Certify that if they qualify to participate, they will not substitute another entity in their place, transfer their rights to another entity, or otherwise assign their status as Qualified Bidders to another entity.

Part 1 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 1 Application Due Date. Prospective bidders will be notified by the Auction Manager no later than three (3) days after the Part 1 Application Due Date whether they succeeded in becoming a Qualified Bidder.

A prospective bidder that has qualified during the Part 1 Application process becomes a Qualified Bidder. The Auction Manager will send a list of all Qualified Bidders to relevant parties that have undertaken to maintain the confidentiality of the list of Qualified Bidders. The relevant parties that will receive this list of Qualified Bidders are as follows:

- Each Qualified Bidder.
- Other parties as necessary to oversee the proper conduct of the auction, including representatives from Duke Energy Ohio, PUCO Staff, and any advisor ("PUCO Consultant") that PUCO Staff may have retained for this purpose.

All parties receiving a list of Qualified Bidders will be subject to the confidentiality requirements as specified below and in the Communications Protocols.

#### 4.2.2 Part 2 Application: Certifications, Indicative Offer, and Pre-Bid Security

For each auction, Qualified Bidders must successfully complete the Part 2 Application process in order to become a Registered Bidder that can bid in the auction. Only Qualified Bidders may submit a Part 2 Application.

Part 2 Applications must be submitted to the Auction Manager no later than 12:00 p.m. noon prevailing Eastern Time on the Part 2 Application Due Date. Qualified Bidders will be notified by the Auction Manager whether they succeeded in the Part 2 Application process no later than three (3) days after the Part 2 Application Due Date.

##### Certifications

In the Part 2 Application, each Qualified Bidder will make a number of certifications regarding associations to ensure that they are participating independently of other Qualified Bidders and to ensure the confidentiality of information regarding the auction.

A Qualified Bidder is associated with another Qualified Bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of the auction and the ability of the auction to produce competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the Auction Manager relies on a number of factors to assess and promote competitive bidding, including the number of independent competitors, using inaccurate information or insufficient disclosure of associations in the Part 2 Application is prohibited.

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### Indicative Offer

With its Part 2 Application, a Qualified Bidder will be required to submit an indicative offer and to post pre-bid security sufficient for this indicative offer. A Qualified Bidder's indicative offer specifies two (2) numbers of tranches for each product in the auction. For each product, the first number represents the number of tranches that the Qualified Bidder is willing to serve at the minimum starting price for the product and the second number represents the number of tranches that the Qualified Bidder is willing to serve at the maximum starting price for the product. For each product, the number of tranches specified in the indicative offer at the minimum starting price cannot exceed the number of tranches specified at the maximum starting price.

Indicative offers are important in two respects. First, the Auction Manager may use the indicative offers to inform the setting of the starting price for each product (i.e., round 1 announced price). Second, the total number of tranches indicated by the Qualified Bidder at the maximum starting prices is used to determine the Qualified Bidder's initial eligibility (i.e., the maximum total number of tranches the Qualified Bidder can bid across all products in round 1 of the auction). The Qualified Bidder's initial eligibility is set to the sum of the number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer. During the auction, bidders are free to switch their tranches among products in response to changes in announced prices (subject to any bidding restrictions). However, a bidder will never be able to bid a total number of tranches across products that exceeds the bidder's initial eligibility. Thus, the number of tranches for each product at the maximum starting prices in the Qualified Bidder's indicative offer does not limit the number of tranches the Qualified Bidder can bid on a particular product, but the total number of tranches at the maximum starting prices across all products in the indicative offer must be equal to the Qualified Bidder's desired initial eligibility across all products.

### Restrictions on the Indicative Offer

A Qualified Bidder may have restrictions on its initial eligibility — due to a credit-based tranche cap and/or due to load caps — and therefore may have restrictions on its indicative offer.

A Qualified Bidder may have a credit-based tranche cap that limits the Qualified Bidder's initial eligibility. Thus, the total number of tranches at the maximum starting prices across all products in the Qualified Bidder's indicative offer must not exceed the Qualified Bidder's credit-based tranche cap. This credit-based tranche cap is based on the credit rating of the Qualified Bidder or its Guarantor. A Qualified Bidder's credit-based tranche cap is determined as follows. The Qualified Bidder or Guarantor must:

- Be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's"), or Fitch, Inc. ("Fitch") and
- Have a senior unsecured debt rating (or, if unavailable, corporate or issuer rating).

If the Qualified Bidder or Guarantor is rated by only one rating agency, that rating will be used. If the Qualified Bidder or Guarantor is rated by only two rating agencies, and the ratings differ, the lower of the two ratings will be used. If the Qualified Bidder or Guarantor is rated by three rating agencies and the ratings differ, the lower of the two highest ratings will be used provided that, in the event that the two highest ratings are common, such common rating will be used. The credit-based tranche cap for a Qualified Bidder or its Guarantor is determined as shown in the following table:

**Table 1. Credit-Based Tranche Cap**

<b>Credit Rating of Qualified Bidder or Guarantor</b>			
	<b>S&amp;P</b>	<b>Moody's</b>	<b>Fitch</b>
	<b>BB and above</b>	<b>Ba2 and above</b>	<b>BB and above</b>
	<b>BB-</b>	<b>Ba3</b>	<b>BB-</b>
	<b>Below BB-</b>	<b>Below Ba3</b>	<b>Below BB-</b>
			<b>Credit-Based Tranche Cap</b>
			No Cap
			10
			5

The parameters in the table above may vary by auction and over time, at Duke Energy Ohio's sole discretion. The credit-based tranche cap is in effect only during the bidding process. After the Master SSO Supply Agreement has been executed by a winning bidder, the credit-based tranche cap will no longer be in effect and the SSO Supplier will be required to meet the credit terms in accordance with Article 5: Credit and Performance Security in the Master SSO Supply Agreement.

In addition to any credit-based tranche cap, a Qualified Bidder will be subject to a load cap that limits the number of tranches the bidder can bid on and win. The load cap will be 80 percent on an aggregated load basis across all auction products for each auction date such that no bidder may bid on and win more tranches than the load cap. The load cap will be implemented by ensuring that each bidder's initial eligibility does not exceed the load cap in an auction.

#### Pre-Bid Security

Each Qualified Bidder must post pre-bid security sufficient for its indicative offer at the maximum starting prices. Each Qualified Bidder must post pre-bid security in an amount equal to \$250,000 per tranche for all products included in the bidder's indicative offer at the maximum starting prices. Either cash or a letter of credit will be accepted as pre-bid security. Some bidders may be subject to additional credit requirements or may be required to submit a letter of intent from a Guarantor or a letter of reference from a bank. The standard form of the letter of credit and other security documents that are in a form acceptable to Duke Energy Ohio will be posted to the Information Website.

If a draft letter of credit, alternate guaranty, letter of intent, letter of reference, or any alternate security submitted by the prospective bidder with the Part 1 Application does not conform to the standard form, the prospective bidder shall indicate clearly any and all modifications in electronic, redlined format from the standard form. Duke Energy Ohio will assess, in their sole and exclusive discretion, whether such modifications are acceptable. The prospective bidder, in its Part 2 Application, must provide the required executed credit documents that either use the standard form or incorporate only those modifications to the standard form accepted by Duke Energy Ohio upon review of the bidder's Part 1 Application.

The following is an example calculation of the pre-bid security.



**Example 2. Pre-Bid Security**

A Qualified Bidder submits an indicative offer of 5 tranches for Product 1 at the minimum starting price and 10 tranches for Product 1 at the maximum starting price, 3 tranches for Product 2 at the minimum starting price and 6 tranches for Product 2 at the maximum starting price, and 2 tranches for Product 3 at the minimum starting price and 4 tranches for Product 3 at the maximum starting price. The Qualified Bidder must submit with this indicative offer of 20 tranches at the maximum starting prices cash or a letter of credit of \$250,000 per tranche. The Qualified Bidder thus posts cash or a letter of credit of \$5.0 million (20 tranches multiplied by \$250,000 per tranche).

Depending on whether the Qualified Bidder is relying on its own financial standing or on that of a Guarantor, and depending on the results of the creditworthiness assessment at the time of the Part 1 Application, the Qualified Bidder may be required additionally to submit a letter of intent to provide a guaranty from its Guarantor or to provide a letter of reference from its bank. Any such additional requirements would be communicated to the Qualified Bidder at the time of qualification during the Part 1 Application process.

For a Part 2 Application to be accepted, it must be complete, including the Qualified Bidder's indicative offer, letter of credit, and additional security (if required). After its Part 2 Application is accepted, a Qualified Bidder becomes a Registered Bidder. The Auction Manager will send each Registered Bidder a summary of its indicative offer, pre-bid security amount, and the Registered Bidder's initial eligibility.

The Auction Manager also will send simultaneously to each Registered Bidder, and to those other parties as necessary to oversee the proper conduct of the auction, a list of Registered Bidders, and the total initial eligibility aggregated across all Registered Bidders. The list of Registered Bidders and the total initial eligibility will not be released publicly. Qualified Bidders, in their Part 2 Applications, will have undertaken to maintain the confidentiality of the list of Registered Bidders and the total initial eligibility, and to destroy documents including electronic files with this information provided by the Auction Manager within five (5) days following the conclusion of the auction, as explained further in the Part 2 Application.

Letters of credit and additional security (if required) will remain in full force, at a minimum, until the fifth calendar day after the conclusion of the auction. Subsequently, a bidder's financial guaranty will be marked cancelled and returned:

- As soon as practicable if the bidder has won no tranches.
- After the bidder has signed the Master SSO Supply Agreement and has complied with all creditworthiness requirements of the Master SSO Supply Agreement for the tranches that it has won.

Duke Energy Ohio can collect on the financial guarantees of bidders that win tranches but that fail to sign the Master SSO Supply Agreement or fail to comply with the creditworthiness requirements immediately following the close of the auction.

#### **4.2.3 Sanctions for Failing to Comply with the Part 1 and Part 2 Applications**

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

#### **4.3 Starting Prices (Round 1 Prices)**

No later than three (3) days before bidding starts for an auction, the Auction Manager will inform all Registered Bidders of the starting price for each product in the auction, which are the announced prices that will be in effect for round 1. For each product, the starting price will be no higher than the maximum starting price and no lower than the minimum starting price for the product. The Auction Manager will set the starting prices.

---

#### **4.4 Extraordinary Events**

The Auction Manager, in consultation with Duke Energy Ohio, may determine that, due to extraordinary events, the minimum starting prices and the maximum starting prices require revision. In this event, the schedule for the auction process also may be revised. If the indicative offers have already been received, the Auction Manager will request that the Registered Bidders (or the Qualified Bidders if the Part 2 Application process had not been completed) revise their indicative offers on the basis of the revised minimum starting prices and the revised maximum starting prices.

For such a revision to be necessary, an extraordinary event must occur between the time at which the minimum starting prices and the maximum starting prices are announced and the day on which bidding starts. An extraordinary event must be agreed to by Duke Energy Ohio and the Auction Manager. Such events could include, but are not limited to, the advent of war, the disruption of a major supply source for potentially extended periods, or other events that could affect significantly the cost of supply.

If an extraordinary event occurs during that time, the Auction Manager in consultation with Duke Energy Ohio will determine revised minimum starting prices and revised maximum starting prices. New indicative offers based on these prices will be required from bidders. To the extent practicable, the determination of new minimum and maximum starting prices, the submission of new indicative offers, and if necessary the announcement of new starting prices, will be carried out so as to afford bidders sufficient time. If an extraordinary event occurs during that time that causes a possible change in the schedule, the Auction Manager in consultation with Duke Energy Ohio will determine a revised schedule.

## **5. BIDDING FORMAT**

In order to participate in the auction, bidders must have been successful in the Part 1 Application process and the Part 2 Application process. Only Registered Bidders are permitted to participate in the auction. Registered Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website.

### **5.1 Descending-Price Clock Format**

The auction format is a simultaneous, multiple-round, descending-price clock format for "N" rounds. The number of rounds "N" for the auction is not pre-determined. Instead, it is determined by the closing rule for the auction. All products are available to bid on simultaneously in the auction. Bids are submitted during bidding rounds. Prices are announced for the products prior to each bidding round, and during a bidding round, a bidder submits for each product the number of tranches it would supply at the product's announced price. If the total number of tranches bid on a product exceeds the product's tranche target — i.e., the product is over-subscribed — the announced price for the product will be reduced for the next round. Announced prices will tend to decline round by round until the number of tranches bid falls sufficiently so that no product is over-subscribed and the auction closes.

An important rule is that a bidder cannot reduce the number of tranches it bids on a product if the product's announced price does not fall from one round to the next, the bidder can only maintain or increase the number of tranches it bids on the product (subject to other rules).

#### **5.1.1 Rounds**

Each bidding round has a specified start time and a specified end time. These start and end times are enforced by the Bidding Website. Prior to the start of the auction, the initial schedule of rounds will be available on the Bidding Website. As the auction progresses, the Auction Manager will keep bidders informed of the start and end times of subsequent rounds through the Bidding Website. The Auction Manager retains the option of pausing a round, delaying the start or end of a round, or otherwise adjusting the round times. The Auction Manager will inform bidders through the Bidding Website if it exercises this discretion to change the start time or end time of a round.

Bidders submit bids only during a round. When a round ends, the bids submitted during that round are processed and results of that round are reported to all bidders as explained in the section "Reporting Round Results" below. Each bidder then prepares to submit a bid for the next round if the auction remains open.

### 5.1.2 The Announced Prices and a Bid

Prior to the start of each round, the Auction Manager announces the price that will be in effect for each product for the round. The announced prices are specified in dollars per MWh or \$/MWh. The price announced by the Auction Manager for a product applies to all the product's tranches. Each bidder decides how many tranches it is willing and able to supply for each product at the product's announced price. A bid by a bidder is, for each product, the number of tranches that the bidder is willing to supply at that announced price for the product. All bids are irrevocable and binding upon the bidders.

At sufficiently high announced prices there will be excess supply for a product causing it to be over-subscribed; that is, the number of tranches bid on the product will exceed the product's tranche target. Excess supply for a product is measured as the total number of tranches bid across all bidders on the product in the round minus the product's tranche target.

### 5.1.3 Reservation Prices and Starting Prices

There are reservation prices for the auction. The reservation price for a product is the price above which tranches for the product will not be purchased. If, at the conclusion of the auction, the reservation price for a product has not been met, no tranches for that product will be awarded. At the conclusion of the auction, the Auction Manager will inform bidders through the Bidding Website if the reservation price for a product has not been met.

Starting prices for the auction are determined after reservation prices are determined. The starting price for a product will be no lower than the reservation price for the product. The starting price may be the same as or higher than the reservation price for the product. The Auction Manager will not announce the reservation prices to bidders in advance of an auction.

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#### 5.1.4 Restrictions on What a Bidder Can Bid

The total number of tranches a bidder bids across all products in a round cannot exceed the bidder's eligibility for that round. That is, a bidder's eligibility to bid in a round is the maximum number of tranches it is allowed to bid across all products in that round. A bidder's eligibility for a round simply is the number of tranches the bidder bid across all products in the preceding round. Thus, a bidder cannot increase its eligibility from round to round; its eligibility can only stay the same or decrease from round to round.

A bidder is not allowed to bid more tranches on a product in a round than the product's tranche target.

A bidder is not allowed to bid a number of tranches that would violate either its credit-based tranche limit or any applicable load cap.

If the announced price for a product has been reduced from one round to the next round, the bidder can reduce the number of tranches it bid on that product.

If the announced price for a product has not been reduced from one round to the next round, the bidder cannot reduce the number of tranches it bid on that product.

Subject to the rules above, in each round a bidder is free to bid its tranches of eligibility across products however it would like to. Thus, subject to the rules above, bidders are free to reduce the tranches it bids and/or to switch tranches across products from round to round in response to changes in the announced prices for the products.

As discussed above, a bidder's initial eligibility is its eligibility for round 1 of the auction and is determined by the total number of tranches across products at the maximum starting prices in the bidder's indicative offer. During the course of the auction, the bidder's eligibility will decline or remain unchanged depending on the total number of tranches bid by the bidder across all products in each round of the auction.

If a bidder's eligibility falls to zero tranches, it will not be allowed to bid in any more rounds of the auction.

#### 5.1.5 Multiple Bids by a Bidder

Because a bidder may decide to change a bid it submitted previously within the current open round, a bidder is allowed to make multiple bid submissions in a round as long as the round remains open for bidding, with each new confirmed bid fully replacing any prior bids it submitted in the round. If a bidder submits multiple bids in a round, the only bid considered in the round for that bidder is the last confirmed bid it submitted in the round.

#### 5.1.6 Default Bid

After the end of a round, a default bid is submitted automatically on behalf of a bidder if the bidder:

- Entered the round with positive eligibility, and
- Did not submit a confirmed bid in the round.

If the announced price for a product declined from the prior round, then zero tranches will be the default bid for that product.

If the announced price for a product did not decline from the prior round, then the number of tranches that the bidder bid on the product in the prior round as determined by the end-of-round ("EOR") procedure following the prior round will be the default bid for the product.

Each bidder is solely responsible for ensuring it submits a confirmed bid prior to the end of the round in order to avoid a default bid of being submitted on the bidder's behalf.

### 5.1.7 The EOR Procedure

At the end of each round, the EOR procedure is used to process the confirmed bids submitted during the round. The EOR procedure includes the following steps.

- (a) The supply for each product is measured by summing up — across the confirmed bids for all bidders — the number of tranches bid for each product.
- (b) The subscription level for each product is measured by comparing the supply for the product to the tranche target for the product. A product is over-subscribed, subscribed, or under-subscribed if supply (i.e., the number of tranches bid) is greater than, equal to, or less than the product's tranche target, respectively.
- (c) If a product has become under-subscribed in a round after being over-subscribed or subscribed the preceding round, then tranches will be rolled back to the point that the product is subscribed. That is, at least some of the tranches that were bid on the product in the preceding round but that were not bid on the product this round will be deemed to still be bid on the product. The price at which a rolled-back tranche is deemed to have been bid simply is the announced price at which the bidder had bid the tranche. There is a priority for selecting tranches to roll back: tranches that otherwise would no longer be bid on any product in the auction and therefore would be reductions in bidders' eligibilities are rolled back first (referred to as "eligibility reduction tranches"), and then if needed, tranches that were switched from being bid on the product to being bid on another product are selected next for rollbacks (referred to as "switched tranches"). Eligibility reduction tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. Likewise, switched tranches are selected for rollback proportionally tranche by tranche, not bidder by bidder. More precisely, because integer tranches are needed, the actual selection mechanism uses a random number generator to select rollbacks tranche by tranche (first for eligibility reduction tranches and then for switched tranches), but on average the selection process results in proportional rollbacks (with priority given to rolling back eligibility reduction tranches first and then switched tranches second). All tranches that are rolled back maintain their eligibility for the bidder. Any bidder subjected to a rollback will be notified through the Bidding Website that a rollback has taken place and will be informed about the number of tranches deemed bid on each product and the price at which those tranches have been deemed bid.



For example, suppose a bidder bids five tranches on a product and no tranches on other products in round 8, and the price for that product is reduced for round 9 and the bidder bids only 1 tranche on the product and no tranches on other products for round 9. Absent any EOR rollbacks following round 9, the bidder's eligibility would fall from 5 tranches to 1 tranche. But during the EOR procedure, suppose two of the bidder's 4 "eligibility reduction tranches" are rolled back on the product, so after the EOR procedure the bidder is deemed to have bid 3 tranches on the product — one at the announced price of the round just ended and two at the announced price of the preceding round — and therefore the bidder is deemed to have 3 tranches of eligibility for round 10.

- (d) "Free eligibility tranches" are determined as follows. A product's "bid stack" is just a list of the tranches currently deemed bid on the product and the price at which each tranche was bid for the product. Because of rollbacks, a product's bid stack could have tranches bid at two different prices: some tranches bid at the earlier, higher announced price and some tranches bid at the current, lower announced price. Any new tranche bid on such a product necessarily will be bid at the current, lower announced price. This new tranche will displace a tranche in the product's bid stack at the earlier, higher announced price. The displaced tranche becomes a "free eligibility tranche". The free eligibility tranche counts as eligibility for the bidder and the bidder can bid the tranche on any product next round, or the bidder can choose not to bid the tranche at all. But if the bidder does not bid the free eligibility tranche next round, it will be withdrawn from the auction permanently and will reduce the bidder's eligibility by one tranche after the next round.
- (e) In some cases, the Auction Manager may reduce the tranche targets. The criteria that could lead to such a reduction will be determined prior to the auction but will not be announced to bidders. Once certain pre-specified criteria related to excess supply and related to the reservation price have been met, the discretion to reduce a product's tranche target because of insufficient supply will be eliminated. Thus, any tranche target reduction would be more likely in the earlier rounds of the auction. If the Auction Manager reduces the tranche target for a product, bidders will be informed of the revised tranche target. Any bidder that otherwise would have eligibility exceeding the new tranche targets will have its eligibility reduced so as not to exceed the new tranche targets.
- (f) A determination is made as to whether the auction has concluded. The auction concludes if either case (1) or case (2) holds as follows:

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- (1) If no product is over-subscribed and no bidder has free eligibility tranches, then the auction has concluded. Note that it is possible for the auction to continue with no reductions in announced prices: if no product is over-subscribed there will be no reductions in announced prices but if there are free eligibility tranches (which "expire" after one round), the auction will remain open for one more round (subject to case (2) described next), allowing bidders with free eligibility to bid those tranches.
  - (2) If this is the Nth consecutive round in which no product is over-subscribed, and the number of tranches of free eligibility across all bidders as a percentage of the sum of the tranche targets across all products is less than or equal to X percent, then the auction has concluded. The parameter values for N and X will be determined before the auction and disclosed to bidders. The likelihood that this case (2) would occur in a particular auction is expected to be low.
- (g) If the auction has concluded, then winning tranches, winning bidders, and winning prices are determined as described below.
- (h) If the auction has not concluded, then each bidder's eligibility is determined for the next round and the price decrement (if any) is determined for each product for the next round.

#### 5.1.8 Price Decrements

The announced prices will decrease round by round by a price decrement for over-subscribed products. Pre-specified price guidelines are used to determine the price decrements. Generally the price decrement for a product will be larger for the earlier rounds in the auction and when the excess supply for the product is greater. The price decrement is expected to be between 0.5 percent and 5 percent of the announced price for the most recently completed round.

The Auction Manager reserves the right to override the price decrement guidelines. The exercise of that right is expected to occur rarely and only if doing so is believed to facilitate timely progression of the bidding process.

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## **5.2 Determination of Winning Tranches, Winning Bidders, and Winning Prices**

At the close of the auction, the winning tranches, winning bidders, and winning prices will be determined as follows.

As a result of the EOR procedure as described above, there are two possible scenarios for a product at the close of the auction.

### **5.2.1 Bid Stack for a Product has All Tranches at the Same Price**

In this scenario, there are no rolled-back tranches in the product's bid stack: all tranches in the bid stack were bid at the last announced price, including any tranches bid on the product in the last round of the auction as determined by the EOR procedure. That announced price is the product's clearing price, and all tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product. Note that this scenario includes the case in which a product was over-subscribed at some point in the auction and later became subscribed, as well as the case in which a product was always under-subscribed in the auction (i.e., it was never subscribed or over-subscribed in the auction).

### **5.2.2 Bid Stack for a Product has Tranches at Two Different Prices**

In this scenario, there are rolled-back tranches in the product's bid stack: some tranches in the bid stack were bid at the last announced price (including any tranches bid on the product in the last round of the auction as determined by the EOR procedure), and some tranches in the bid stack were bid at the next most recent announced price. In this case, the product's clearing price is the next most recent announced price — which necessarily is higher than the last announced price for the product. All tranches in the product's bid stack are winning tranches if the clearing price satisfies the product's reservation price. Bidders who bid those tranches are winning bidders for those tranches, and all bidders with winning tranches on a product are paid the same price — i.e., the clearing price — for each winning tranche on the product.

## **5.3 Example of Round by Round Bidding**

Appendix A provides an illustrative example of round by round bidding.

## **5.4 Reporting Round Results**

During a round, a bidder will see the current status of the auction and the status of the current round including the announced price for each product as well as the bidder's own bidding status. A bidder will not see information about other bidders.

Between rounds the Bidding Website will report the results for the most recently completed round. Results for all prior rounds also will be accessible. The round results for each completed round in the auction will show:

- The announced price for each product and a range of total supply across all bidders and all products (that is, a range that includes the total number of tranches bid). The range of total supply will be defined by two different integers. Actual total supply will not be reported but will be at least as high as the lower of the two integers and no higher than the higher of the two integers. There is an exception to reporting total supply as a range of two integers: if and when total supply has declined below a pre-determined level, total supply will be reported simply as being below that level. The reporting ranges will be made available to bidders in advance of each auction.
- For each bidder, that bidder's bid for the round — i.e., the number of tranches bid on each product — and the bidder's eligibility for the next round. (Each bidder does not see information about other bidders.)
- The announced price for each product for the next round if the auction will continue with the next round.

### **5.5 Frequency of Rounds**

The early rounds of bidding may be longer in duration than later rounds. The duration of a bidding round will be at least five (5) minutes.

The time between early rounds of bidding may be longer in duration than for later rounds. The time between bidding rounds will be at least five (5) minutes.

The schedule of rounds and any changes to the schedule will be made available to bidders through the Bidding Website.

### **5.6 Auction Pause Declared by Auction Manager**

At any time during the auction, the Auction Manager may decide to pause the auction. This is not expected to happen often and it may not happen at all. If the Auction Manager pauses the auction, bidders will be notified and bidders will be notified if there are any changes to the schedule of rounds.

## **6. AFTER THE AUCTION CLOSSES**

### **6.1 Notification of Results**

At the close of the auction, if the Auction Manager determines that the auction did not violate the competitive bidding process rules in such a manner so as to invalidate the auction, the Auction Manager will notify Duke Energy Ohio, the PUCO, the PUCO Consultant (if one has been retained), and the bidders as follows.

- The Auction Manager will notify Duke Energy Ohio, the PUCO, and the PUCO consultant of the identity of winning bidders, the number of tranches won by each winning bidder, and the prices for the tranches won.
- The Auction Manager will notify each winning bidder of how many tranches the bidder has won and at what prices. The Auction Manager also will notify the unsuccessful bidders that they have not won any tranches.

The names of the winning bidders, the number of tranches won by each bidder, and the winning prices will remain confidential until released publicly by the PUCO or as required by law.

The PUCO may reject the results of the auction, through an Order filed within forty-eight (48) hours of the conclusion of the auction, based upon a report from the independent auction manager or the Commission's consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the PUCO determines that one or more of the following criteria were not met:

1. The bidding process was oversubscribed based on bidder indicative offers submitted as part of the Part 2 Application, such that the amount of the supply bid upon was greater than the amount of the load bid out;
2. There were four or more bidders; or
3. Consistent with the load cap, no bidder won more than 80% of the initial tranche target for the auction.

Otherwise, the Commission shall approve the auction results.

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## **6.2 Execution of Master SSO Supply Agreement**

The winning bidders and Duke Energy Ohio will execute the Master SSO Supply Agreements three (3) business days following the close of the auction once the specific pricing information and load obligations have been inserted upon completion of the auction. Each winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement.

## **6.3 Sanctions for Failure to Execute the Master SSO Supply Agreement**

A winning bidder's financial guaranty posted with its Part 2 Application may be forfeited if the winning bidder does not execute the Master SSO Supply Agreement within three (3) business days following the close of the auction, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master SSO Supply Agreement, or if it fails to agree to any of the terms of the Master SSO Supply Agreement. If Duke Energy Ohio exercises its right to collect on the financial guarantees, then any contractual rights or other entitlements of the winning bidder will terminate immediately without further notice by Duke Energy Ohio. In addition, the winning bidder will be liable for damages incurred by Duke Energy Ohio, which will be determined in accordance with the terms of the Master SSO Supply Agreement as though the winning bidder were a defaulting party to the Master SSO Supply Agreement.

## **7. USE OF THE BIDDING WEBSITE**

Bidders will bid in the auction by accessing the Auction Manager's secure Bidding Website. An Authorized Representative of a bidder will access the Bidding Website using their own Web browser. The URL address for the Bidding Website, as well as user names and passwords, will be provided to Registered Bidders prior to the start of the auction.

The Bidding Website provides Web pages that allow a Registered Bidder to submit and confirm bids, to verify its status, to view results from prior rounds, to view the schedule of rounds, and to view messages from the Auction Manager.

## **7.1 Importance of Confirmed Bids**

Submitting a bid on the Bidding Website involves three steps:

- (1) Web page for entry and submission of the bid quantities. The bidder enters its desired bid and then submits the bid in order to proceed to the next step.
- (2) Web page for validation of the bid. The bidder is asked to review the bid it submitted in the first step before proceeding to the confirmation step.
- (3) Web page showing confirmation of the bid. The bidder receives a unique confirmation ID for the bid and the time-stamp at which the bid was recorded by the Bidding Website server.

It is important to note that a bid is not accepted and recorded as an accepted bid until and unless the bidder reaches the third step in which the bid confirmation Web page displays the unique confirmation ID and time-stamp for the bid.

## **7.2 Requirements for Using the Bidding Website**

Access to the Bidding Website requires all of the following:

- User name and password provided by the Auction Manager.
- Access to the Internet.
- Compatible Web browser.
- Status as a Registered Bidder.

A bidder loses access to the Bidding Website after it no longer is possible to win tranches in the auction.

## **7.3 Messaging**

The Bidding Website displays messages from the Auction Manager. These messages from the Auction Manager are displayed for all bidders with access to the Bidding Website.

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## **8. BACKUP BIDDING PROCEDURE**

In case a bidder has technical difficulties, and as a result is not able to submit a bid via the Bidding Website in a round, a backup bidding procedure will be provided as follows. The bidder uses the Backup Bidding Fax Number to submit its bid via facsimile. It is recommended that the bidder call the Help Desk and inform the operator that it has submitted a bid using the backup bidding procedure. Reasonable efforts will be made to contact the bidder if the backup bid is not received via facsimile in the time expected. Once the backup bid is received via facsimile, a member of the Auction Manager team will attempt to enter the bid on the Bidding Website on behalf of the bidder.

Prior to the auction, bidders will be provided with the Backup Bidding Fax Number and with forms to use for faxing a bid using the backup bidding procedure.

Bidders must be aware and understand that there is no guarantee or other assurance that if it submits a bid using the backup bidding procedure that its bid will be submitted and confirmed on its behalf by the Auction Manager team consistent with the intentions of the bidder and in time before the round ends.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website because the round has ended, a default bid will be entered for the bidder as described above in the sections on default bids.

If a backup bid submitted by a bidder is not accepted and confirmed by the Bidding Website for other reasons (e.g., the number of tranches bid is greater than a bidder's eligibility or violates the bidder's credit-based tranche limit or applicable load cap), the Auction Manager team will use reasonable efforts to inform the bidder that a new bid must be submitted.

If a backup bid submitted by a bidder is confirmed by the Bidding Website, the Auction Manager team will contact the bidder by faxing confirmation of the accepted bid to the bidder.

Bidders use the backup bidding procedure at their own risk. In all cases involving backup bids, the Auction Manager team does not accept any responsibility, obligation, or liability for errors, omissions, timeliness, or otherwise, related to whether a backup bid is entered into and confirmed by the Bidding Website on behalf of the bidder or as intended by the bidder.

## **9. WHO TO CONTACT IN CASE OF PROBLEMS DURING THE AUCTION**

A bidder should contact the Help Desk if it has questions or problems. The phone number for the Help Desk will be provided to bidders prior to the start of the auction.



## **10. CONTINGENCY PLAN TO PURCHASE TRANCHES**

### **10.1 If Fewer Tranches than the Tranche Target are Purchased in the Auction**

In the event that fewer tranches than a product's tranche target are purchased in the auctions in a given year, Duke Energy Ohio will implement a Contingency Plan for the unfilled tranches. Under that plan, any unsubscribed tranches from the first auction in a year will be rolled over to the second auction in the year. If all tranches are not fully subscribed after all the auctions in any given year, the remaining tranches will be offered to current Duke Energy Ohio SSO Suppliers. These suppliers will have won tranches in the current or a prior Duke Energy Ohio CBP auction. An SSO Supplier will be considered a current SSO Supplier from the conclusion of the CBP auction in which such supplier won tranches until the termination of the prevailing Master SSO Supply Agreement. Suppliers will be assigned a random number and each unfilled tranche will be offered to current SSO Suppliers in descending order of random number, subject to any credit-based tranche limits and any applicable load caps for such suppliers. The tranches will be offered to current suppliers at the clearing price, starting price, or reservation price, whichever is lowest.

If, after the conclusion of the steps above used to assign unfilled tranches there still are unfilled tranches, then the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless otherwise instructed by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

### **10.2 If a Winning Bidder Defaults Prior to or During the SSO Delivery Period**

In the event a winning bidder defaults prior to or during the delivery of SSO Load requirements, Duke Energy Ohio will implement a Contingency Plan for the open tranches. Open tranches will be offered to other current SSO Suppliers using the same procedure as used for unfilled tranches at the auction as described above.

If tranches still remain open after the procedures above are applied, the necessary SSO supply requirements will be met through PJM-administered markets at prevailing Day-ahead, Real-time zonal spot prices, and, unless instructed otherwise by the PUCO, Duke Energy Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches.

Additional costs incurred by Duke Energy Ohio in implementing the Contingency Plan will be assessed first against the defaulting supplier's credit security, to the extent available.

## **11. ASSOCIATION AND CONFIDENTIAL INFORMATION RULES**

The Association and Confidential Information rules are described below.

### **11.1 Process for Reporting Associations, Identifying Concerns and Remedies**

A prospective bidder applying to qualify to bid will be required to disclose in its Part 1 Application any bidding agreement or arrangement in which it may have entered. A prospective bidder will be required to certify in its Part 1 Application that, should it qualify to participate, it will not disclose information regarding the list of Qualified Bidders. A prospective bidder also will be required to certify that it accepts the terms of the Master SSO Supply Agreement and, should it win tranches, it will sign the applicable Master SSO Supply Agreement and comply with all creditworthiness requirements by the stated deadline.

Once entities are qualified to bid, each Qualified Bidder will be asked in its Part 2 Application to make a number of certifications, each detailed in the Part 2 Application, and each bidder may be required to provide additional information to the Auction Manager if a certification cannot be made. Each Qualified Bidder will be asked to certify that it will undertake to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the auction. A Qualified Bidder also will be asked to certify that it has not and will not come to any agreement with another Qualified Bidder with respect to bidding in the auction, except as disclosed and approved by the Auction Manager in its Part 1 Application.

Before obtaining sealed documentation necessary to participate in the auction, Registered Bidders will be required to certify that they will continue to maintain the confidentiality of any information that they will have acquired through their participation in the auction.

### **11.2 Confidential Information**

Confidential Information relative to bidding strategy means information relating to a bidder's bid(s) in the auction, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bids that another bidder would be willing to submit. Confidential Information relative to bidding strategy includes (but is not limited to): a bidder's strategy; a bidder's indicative offer; the quantities that a bidder wishes to supply; the bidder's estimation of the value of a tranche; the bidder's estimation of the risks associated with serving the load for the auction; and a bidder's contractual arrangements for purchasing power to serve such load were the bidder to win tranches in the auction.

Confidential Information regarding the auction means information that is not released publicly by the PUCO, Duke Energy Ohio or the Auction Manager and that a bidder acquires as a result of participating in the auction, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future competitive bidding processes, impair the ability of Duke Energy Ohio to hold future competitive bidding processes, or harm consumers, bidders or applicants. Confidential Information regarding the auction includes (but is not limited to): the list of Qualified Bidders, the list of Registered Bidders, the initial eligibility, the status of a bidder's participation, and all non-public reports of results and announcements made by the Auction Manager to any or all bidders in this auction.

Absolute protection from public disclosure of the bidders' data and information filed in this auction process cannot be provided. By participating in this auction process, each bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

In addition, the bidder agrees the bidder's data and information submitted in this auction process will be disclosed if required by any federal, state or local agency (including, without limitation, the PUCO) or by a court of competent jurisdiction. However, Duke Energy Ohio will endeavor to notify the bidder in advance of such disclosure. In any event, neither Duke Energy Ohio nor the Auction Manager, nor any of their employees or agents, will be responsible to the bidders or any other party, or liable for any disclosure of such designated materials before, during or subsequent to this auction. Notwithstanding the above, Duke Energy Ohio and the Auction Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this auction process in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if necessary, without the prior consent/approval of, or notice to, any such bidder.

### **11.3 Certifications and Disclosures to Be Made**

A prospective bidder will be required in its Part 1 Application to disclose any bidding agreement or any other arrangement in which the prospective bidder may have entered and that is related to its participation in the auction. A prospective bidder that has entered into such an agreement or arrangement must name the entities with which the prospective bidder has entered into a bidding agreement, or a joint venture for the purpose of participating in the auction, or a bidding consortium, or any other arrangement pertaining to participating in the auction. A bidding consortium is a group of separate businesses or business people joining together to submit joint bids in the auction.

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In addition, a prospective bidder will be required to make the certifications listed in the Part 1 and Part 2 Applications.

The PUCO may publicly release the winning prices and the names of the winning bidders from the auction. The PUCO may choose to release additional information. After the auction, a winning bidder itself may release information regarding the number of tranches it has won, and a non-winning bidder itself may release information only regarding the fact that it participated in the auction. The winning bidders and the non-winning bidders otherwise continue to be bound by their certifications as described previously. In particular, no winning bidder and no non-winning bidder itself can reveal the winning prices of the auction prior to these being publicly released by the PUCO.

#### **11.4 Actions to Be Taken if Certifications Cannot Be Made**

If a bidder cannot make all the certifications above, the Auction Manager will decide within five (5) days following the deadline to submit the Part 2 Application on a course of action on a case-by-case basis. To decide on this course of action, the Auction Manager may make additional inquiries to understand the reason for the inability of the bidder to make the certification.

If Qualified Bidders do not comply with additional information requests by the Auction Manager regarding certifications required in the Part 2 Application, the Auction Manager may reject the application.

### **11.5 Sanctions for Failure to Comply**

Sanctions may be imposed on a Qualified Bidder for failing to properly disclose information relevant to determining associations, for coordinating with another bidder without disclosing this fact, for releasing Confidential Information or disclosing information during the auction (aside from only the specific exceptions provided above with respect to entities explicitly named in the Part 1 Application as entities that are part of a bidding agreement or other arrangement, to an Advisor; or bidders with which it is associated), and in general for failing to abide by any of the Communications Protocols. Such sanctions can include, but are not limited to, any one or more of the following: termination of the Master SSO Supply Agreement; the loss of all rights to provide tranches won by such bidder; the forfeiture of letters of credit and other fees posted or paid; action (including prosecution) under applicable state and/or federal laws; attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure; debarment from participation in future competitive bidding processes; and/or other sanctions that may be appropriate. Should such an event occur, the Auction Manager will make a recommendation to Duke Energy Ohio regarding sanctions. The imposition of such sanctions will be at the discretion of Duke Energy Ohio.

## **12. MISCELLANEOUS**

### **12.1 Warranty on Information**

The information provided for the auction, including but not limited to information provided on the Information Website, has been prepared to assist bidders in evaluating the auction process. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Neither Duke Energy Ohio nor the Auction Manager make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, either individually or as a corporation, be liable for any representation expressed or implied in the auction process or any omissions from the auction process, or any information provided to a bidder by any other source. A bidder should check the Information Website frequently to ensure it has the latest documentation and information. Neither Duke Energy Ohio, nor the Auction Manager, nor any of their representatives, shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of information.

### **12.2 Hold Harmless**

Bidder shall hold Duke Energy Ohio and the Auction Manager harmless of and from all damages and costs, including but not limited to legal costs, in connection with all claims, expenses, losses, proceedings or investigations that arise in connection with the auction process or the award of a bid pursuant to the auction process.

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### **12.3 Bid Submissions Become Duke Energy Ohio's Property**

All bids submitted by bidders participating in the auction will become the exclusive property of Duke Energy Ohio upon conclusion of the auction process.

### **12.4 Bidder's Acceptance**

Through its participation in the auction process, a bidder acknowledges and accepts all the terms, conditions and requirements of the auction process and the Master SSO Supply Agreement.

### **12.5 Permits, Licenses, Compliance with the Law and Regulatory Approvals**

Bidders shall obtain all licenses and permits and status that may be required by any governmental body, agency or organization necessary to conduct business or to perform hereunder. Bidders' subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

### **12.6 Auction Intellectual Property**

All title, interests and other intellectual property rights in and to the auction design, the auction format and methodology, the auction software, the source code (including all modifications, enhancements, customization, adaptations and derivative works made by the Auction Manager) and associated documentation, including but not limited to these Bidding Rules, and the screen formats and forms designed by the Auction Manager (the "Auction Software"), are proprietary to the Auction Manager and all rights, title, and interest to the Auction Software remain with the Auction Manager. The Auction Manager grants Qualified Bidders a non-exclusive, non-transferable, limited license to use the Auction Software, solely for use in connection with the auction, subject to the terms and conditions set forth herein, and not for copying, relicensing, sublicensing, distribution or marketing by the Qualified Bidder. No other interest is conveyed to the Qualified Bidder other than the license expressly granted herein. The foregoing use license shall immediately terminate upon disqualification of the Qualified Bidder or upon termination or completion of the auction process. If at any time it is determined in the Auction Manager's sole discretion that the Qualified Bidder is in breach of this section 12.6, the Auction Manager shall be entitled to terminate the Qualified Bidder's access rights to the Auction Software.

Notwithstanding anything herein to the contrary, and without limiting the Qualified Bidder's other obligations herein, the Qualified Bidder shall not, nor shall it permit any third party to: (i) modify, translate or otherwise create derivative works of the Auction Software; (ii) reverse engineer, decompile, decode, disassemble or translate any Auction Software, or output thereof, or otherwise attempt to reduce to human readable form or derive the source code, protocols or architecture of any Auction Software; (iii) use or study any Auction Software, or output thereof, for the purpose of developing any software that is intended to replace, or that has functions, structure or architecture similar to, such Auction Software, or any part thereof; (iv) publish, or otherwise make available to any third party, any benchmark or other testing information or results concerning the Auction Software; (v) permit any other person who is not authorized to access or use all or any part of the Auction Software or (vi) copy the Auction Software, distribute the Auction Software, remove or obscure any proprietary labeling on or in the Auction Software, create any derivative works based on the Auction Software, or modify the Auction Software, in each case, except to the extent expressly permitted by the Auction Manager in writing.

In using the Auction Software, a Qualified Bidder shall take steps to prevent any virus, worm, built-in or use-driven destruction mechanism, algorithm, or any other similar disabling code, mechanism, software, equipment, or component designated to disable, destroy or adversely affect the Auction Software from being introduced into the systems.

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**APPENDIX A — EXAMPLE OF ROUND BY ROUND BIDDING**

The illustrative example below shows for two bidders (BidderA and BidderB) and two products (Product-1 and Product-2) the confirmed bids (pre-EOR) and the post-EOR results for each round. In the example, the auction closes after round 4.

**Round 1**

For round 1, the announced prices are \$75.00 and \$82.00 for Product-1 and Product-2, respectively. At those announced prices, BidderA bids 55 tranches and 85 tranches on Product-1 and Product-2, respectively. BidderB bids 80 tranches and 27 tranches on Product-1 and Product-2, respectively.

When the round closes the EOR procedure is executed. Each product is over-subscribed: 135 tranches were bid on Product-1 which has a tranche target of 100, and 112 tranches were bid on Product-2 which has a tranche target of 100.

The announced price for Product-1 will be reduced from \$75.00 to \$72.50 for round 2. The announced price for Product-2 will be reduced from \$82.00 to \$78.60 for round 2.

BidderA will have eligibility of  $55+85 = 140$  tranches for round 2, and BidderB will have eligibility of  $80+27 = 107$  tranches for round 2.

**Round 2**

At the announced prices for round 2, BidderA bids 40 tranches and 85 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 55 to 40 tranches. BidderB bids 50 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB switched 30 tranches from Product-1 to Product-2.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 10 tranches: only 90 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 15 tranches, while BidderB's bid maintained its eligibility. Thus, 10 of the 15 eligibility reduction tranches of BidderA are rolled back on Product-1. Those 10 tranches are priced at the announced price for Product-1 at which they were bid in round 1: \$75.00. The announced price for Product-1 will remain at \$72.50 for round 3.

Product-2 is over-subscribed by 42 tranches. The announced price for Product-2 will be reduced from \$78.60 to \$76.10 for round 3.



BidderA will have eligibility of  $50+85 = 135$  tranches for round 3 (including the 10 tranches rolled back on Product-1), and BidderB will have eligibility of  $50+57 = 107$  tranches for round 3.

### Round 3

At the announced prices for round 3, BidderA bids 99 tranches and 36 tranches on Product-1 and Product-2, respectively. Thus, BidderA is switching 49 of the tranches bid from Product-2 to Product-1. BidderB bids 50 tranches and 35 tranches on Product-1 and Product-2, respectively. Thus, BidderB is reducing its tranches bid on Product-2 from 57 to 35 tranches.

When the round closes the EOR procedure is executed. Product-1 is over-subscribed by 49 tranches. Product-2 is under-subscribed by 29 tranches: only 71 tranches bid against the tranche target of 100 tranches: BidderA's bid maintained its eligibility while BidderB's bid represents a reduction in its eligibility by 22 tranches. Thus, all 22 of the eligibility reduction tranches of BidderB are rolled back on Product-2. Those 22 tranches are priced at the announced price for Product-2 at which they were bid in round 2: \$78.60. Even after rolling back those 22 eligibility reduction tranches of BidderA, Product-2 still is under-subscribed — by 7 tranches. So 7 tranches that BidderA had switched from Product-2 to Product-1 are rolled back to Product-2. Those 7 tranches are priced at the announced price for Product-2 at which they were bid in round 2: \$78.60.

After rolling back 7 tranches from Product-1 to Product-2 for BidderA, BidderA still has increased the number of tranches it is bidding on Product-1: from 50 tranches bid in round 2 (10 tranches at \$75.00 and 40 tranches at \$72.50) to 92 tranches bid in round 3 (10 tranches at \$75.00 and 82 tranches at \$72.50). Product-1 is over-subscribed as a result, so higher-priced tranches in Product-1's bid stack can be removed. All 10 of BidderA's higher-priced tranches are removed from Product-1's bid stack, and these 10 tranches become BidderA's free eligibility for round 4. In round 4, BidderA can bid any of the 10 tranches on any product, but to the extent those 10 tranches are not bid on a product in round 4, those free eligibility tranches and their associated eligibility for BidderA will be permanently removed from the auction after round 4.

Because Product-1 is over-subscribed, the announced price for Product-1 will be reduced from \$72.50 to \$70.15 for round 4. Because Product-2 is not over-subscribed, the announced price for Product-2 will remain at \$76.10 for round 4.

BidderA will have eligibility of  $82+43+10 = 135$  tranches for round 4, and BidderB will have eligibility of  $50+57 = 107$  tranches for round 4 (including the 22 tranches rolled back on Product-2).

## Round 4

At the announced prices for round 4, BidderA bids 46 tranches and 43 tranches on Product-1 and Product-2, respectively. Thus, BidderA reduced its tranches bid on Product-1 from 82 to 46 tranches. BidderB bids 32 tranches and 57 tranches on Product-1 and Product-2, respectively. Thus, BidderB reduced its tranches bid on Product-1 from 50 to 32 tranches.

When the round closes the EOR procedure is executed. Product-1 is under-subscribed by 22 tranches: only 78 tranches bid against the tranche target of 100 tranches: BidderA's bid represents a reduction in its eligibility by 36 tranches, while BidderB's bid represents a reduction in its eligibility by 18 tranches. Of the 54 fewer tranches bid on Product-1, 36 were eligibility reductions from BidderA and 18 were eligibility reductions from BidderB. Of those 54 fewer tranches bid,  $100 - 78 = 22$  tranches need to be rolled back on Product-1. The selection of which tranches are rolled back is done by assigning random numbers tranche by tranche (not bidder by bidder) to each of the 54 fewer tranches bid on Product-1. On average, the selection of the rolled back tranches will be proportional based on the number of tranches by which each bidder reduced its bid on the product. Thus, if the assignment of random numbers and selection of rolled back tranches were repeated many times, the number of rolled back tranches for BidderA on Product-1 would be expected to be 15 on average or  $(82 - 46) / (132 - 78) * (100 - 78) = 36 / 54 * 22$ , rounded, and the number of rolled back tranches for BidderB on Product-1 would be expected to be 7 on average:  $(50 - 32) / (132 - 78) * (100 - 78) = 18 / 54 * 22$ , rounded.

## Auction Close

After the rollback is done for Product-1, it is determined that no product is over-subscribed and no bidder has free eligibility tranches. Thus, the criteria are met for closing the auction.

Product-1's bid stack has tranches bid at \$72.50 and tranches bid at \$70.15. So Product-1's clearing price is the higher of the two, or \$72.50. BidderA wins 61 tranches and BidderB wins 39 tranches for Product-1. All 100 tranches procured for Product-1 are paid the price of \$72.50.

Product-2's bid stack has tranches bid at \$78.60 and tranches bid at \$76.10. So Product-2's clearing price is the higher of the two, or \$78.60. BidderA wins 43 tranches and BidderB wins 57 tranches for Product-2. All 100 tranches procured for Product-2 are paid the price of \$78.60.

**Example 3. Round by Round Bidding with Pre-EOR and Post-EOR Results**

Round	Product-1					Product-2					Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
1												
Pre-EOR	\$75.00	100	135		35	\$82.00	100	112		12		
BidderA			55	@ \$75.00				85	@ \$82.00			140
BidderB			80	@ \$75.00				27	@ \$82.00			107
Post-EOR		100	135		35		100	112		12		
BidderA			55	@ \$75.00				85	@ \$82.00			140
BidderB			80	@ \$75.00				27	@ \$82.00			107
2												
Pre-EOR	\$72.50	100	90		(10)	\$78.60	100	142		42		
BidderA			40	@ \$72.50				85	@ \$78.60			125
BidderB			50	@ \$72.50				57	@ \$78.60			107
Post-EOR		100	100		0		100	142		42		
BidderA			50	10 @ \$75.00 40 @ \$72.50				85	@ \$78.60			135
BidderB			50	@ \$72.50				57	@ \$78.60			107

Round	Product-1					Product-2					Next-Round Eligibility	
	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Announced Price	Tranche Target	Tranches Bid	@ Price	Excess Supply	Free	Total
3	\$72.50					\$76.10						
Pre-EOR		100	149		49		100	71		(29)		
BidderA			99	10 @ \$75.00 89 @ \$72.50				36	@ \$76.10		—	135
BidderB			50	50 @ \$72.50				35	@ \$76.10		—	85
Post-EOR		100	132		32		100	100		0		
BidderA			82	@ \$72.50				43	7 @ \$78.60 36 @ \$76.10		10	135
BidderB			50	@ \$72.50				57	22 @ \$78.60 35 @ \$76.10		—	107
4	\$70.15					\$76.10						
Pre-EOR		100	78		(22)		100	100		0		
BidderA			46	@ \$70.15				43	7 @ \$78.60 36 @ \$76.10		—	89
BidderB			32	@ \$70.15				57	22 @ \$78.60 35 @ \$76.10		—	89
Post-EOR		100	100		0		100	100		0		
BidderA			61	15 @ \$72.50 46 @ \$70.15				43	7 @ \$78.60 36 @ \$76.10		—	104
BidderB			39	7 @ \$72.50 32 @ \$70.15				57	22 @ \$78.60 35 @ \$76.10		—	96

	Product-1			Product-2			Tranches Won
	Clearing Price	Tranche Target	Tranches Won	Clearing Price	Tranche Target	Tranches Won	
Results	\$72.50	100	100	\$78.60	100	100	100
BidderA			61			43	104
BidderB			39			57	96

## Duke Energy Ohio

Present Value Benefit of ESP Compared to MRO <sup>(a)</sup>

Line		Jan '12-Dec '12 2012	Jan '13-Dec '13 2013	Jan '14-Dec '14 2014	Jan '15-May '15 2015
<b>Price Forecasts</b>					
1	Projected Legacy ESP Price <sup>(b)</sup>	\$79.19	\$74.45	\$76.22	\$75.44
2	Projected Retail Market Price <sup>(c)</sup>	\$61.38	\$66.31	\$78.65	\$89.00
3	MRO Blend % (of Market Price)	10%	20%	30%	40%
4	MRO Price Blended Rate (\$/MWh)	<u>\$77.41</u>	<u>\$72.82</u>	<u>\$76.95</u>	<u>\$80.86</u>
5	Projected Retail Market Price (Line 2)	\$61.38	\$66.31	\$78.65	\$89.00
6	Electric Security Stabilization Charge <sup>(d)</sup>	<u>5.37</u>	<u>5.29</u>	<u>5.19</u>	<u>-</u>
7	Proposed SSO Price in ESP	<u>\$66.75</u>	<u>\$71.60</u>	<u>\$83.85</u>	<u>\$89.00</u>
<b>Revenue Comparison (MRO v. ESP)</b>					
8	Total Revenue at MRO Rate	\$1,584,804,517	\$1,515,400,007	\$1,629,570,849	\$700,610,416
9	Total Revenue at ESP Rates				
10	All kWh at Average ESP Rate	\$1,366,630,966	\$1,489,967,594	\$1,775,667,622	\$771,119,852
11	Less: Discount for PIPP Load (see workpaper) <sup>(e)</sup>	<u>(1,034,686)</u>	<u>(1,175,033)</u>	<u>(1,458,150)</u>	<u>(556,176)</u>
12	Total Revenue at ESP Rates	<u>\$1,365,596,280</u>	<u>\$1,488,792,561</u>	<u>\$1,774,209,472</u>	<u>\$770,563,676</u>
Other Benefits of ESP (Per Stipulation) <sup>(f)</sup>					
13	Economic Development	\$1,150,000	\$0	\$0	\$0
14	Weatherization/Fuel Fund	<u>1,700,000</u>	<u>-</u>	<u>-</u>	<u>-</u>
15	Total Other Quantifiable Unconditional Benefits	<u>\$2,850,000</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
16	Present Value <sup>(g)</sup> of MRO Revenue	\$4,586,339,265			
17	Present Value <sup>(g)</sup> of ESP Revenue	<u>\$4,524,279,806</u>			
18	Net Benefit of ESP to Customers (ESP v. MRO)	<u>\$62,059,459</u>			
<b>Other Assumptions</b>					
19	Projected Total Retail Sales (MWh) <sup>(h)</sup>	20,473,777	20,810,354	21,177,162	8,664,268
20	Projected Total PIPP Sales (MWh) <sup>(i)</sup>	297,409	302,298	307,627	125,860

Notes: <sup>(a)</sup> The table below includes only quantifiable benefits. See Supplemental Testimony of Julia S. Janson for other benefits of the ESP Stipulation filed on October 24, 2011.

<sup>(b)</sup> As shown in the Direct Testimony of Judah L. Rose, Exhibit B.

<sup>(c)</sup> As shown in the Direct Testimony of Judah L. Rose, Exhibit 8B.

<sup>(d)</sup> Per Stipulation, Rider ESSC set at \$110 million per year, subject to true-up.

<sup>(e)</sup> Per Stipulation, PIPP Discount is 5% of Residential PTC, excluding AER-R, (i.e., Rider RC+Rider RE+Rider SCR+Rider RTO).

<sup>(f)</sup> Includes shareholder contributions to various entities per Stipulation. Stipulation provides for additional funding for years after 2012 subject to meeting earnings thresholds for Duke Energy Ohio. Only 2012 amounts are shown as these are the only contributions that are guaranteed per the Stipulation.

<sup>(g)</sup> Discounted at weighted-average cost of capital as shown in Attachment WDW-1 of Direct Testimony of William Don Wathen Jr.

<sup>(h)</sup> Projected MWh sales, at the meter, as shown in Attachment WDW-2 of Direct Testimony of William Don Wathen Jr.

<sup>(i)</sup> Current PIPP MWh sales escalated at overall growth in load.

Attachment E

Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

P.U.C.O. Electric No. 20  
Original Sheet No. 88  
Page 1 of 2

RIDER UE-GEN  
UNCOLLECTIBLE EXPENSE - ELECTRIC GENERATION RIDER

APPLICABILITY

Applicable to all retail jurisdictional customers in the Company's electric service territory, including those customers taking generation service from a Certified Retail Electric Service (CRES) provider, except for those customer accounts not designated for Duke Energy Ohio's Purchase of Accounts Receivable Program.

DESCRIPTION

This rider enables the recovery of uncollectible accounts expense related generation service, including Percentage of Income Payment ("PIPP") customer installments not collected through the Universal Service Fund Rider. The amounts in the Rider, exclusive of uncollectible PIPP installments, will only be collected from the class (residential or non-residential) that created the uncollectible accounts expense. Uncollectible accounts expense associated with PIPP will be allocated in the manner consistent with the Universal Service Fund Rider. The first application shall be filed in the second quarter of 2012.

CHARGE

A charge of \$0.000000 per kWh shall be applied to all kWh delivered to residential customers. A charge of \$0.00 per bill shall be applied to each non-residential customer.

Filed pursuant to an Order dated \_\_\_\_\_ in Case No. \_\_\_\_\_ before the Public Utilities Commission Ohio.

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Issued:

Effective:

Issued by Julie Janson, President

Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

Page 2 of 2

\* \* \* \*

11.6 Purchase of Accounts Receivable (PAR)

- a) In order to participate in the Company's PAR program, a Certified Supplier must first sign an Account Receivables Purchase Agreement with the Company, which may include, but will not be limited to, the following provisions:
  - i) Purchase price, procedures, and fees
  - ii) Obligations of the parties
  - iii) Representations and warranties
  - iv) Covenants of Seller
  - v) Conditions Precedent
  - vi) Administration and Collection
  - vii) Termination
  - viii) Indemnification
- b) Notwithstanding any provisions of an existing Account Receivables Purchase Agreement to the contrary, the Company shall purchase the receivables of a Certified Supplier that has entered into an Account Receivables Purchase Agreement with the Company at zero discount and shall pay the Certified Supplier for such receivables no later than the twentieth day of the month after the month in which the billing occurs.

Filed pursuant to an Order dated \_\_\_\_\_ in Case No. \_\_\_\_\_ before the Public Utilities Commission Ohio.

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Issued:

Effective:

Issued by Julie Janson, President



**MASTER STANDARD SERVICE OFFER (“SSO”)**  
**SUPPLY AGREEMENT**  
**BY AND BETWEEN**  
**DUKE ENERGY OHIO, INC.**  
**AND**  
**EACH SSO SUPPLIER SET FORTH ON ATTACHMENT A HERETO**

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## MASTER SSO SUPPLY AGREEMENT

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

### RECITALS

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

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

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

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

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

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

**WHEREAS**, Duke Energy Ohio provided and/ or procured Capacity Resources in an amount which fulfills its FRR obligations for the DEOK Load Zone; and

**WHEREAS**, during the Term, each SSO Supplier, as an LSE in the DEOK Load Zone, will satisfy its Capacity obligations under the PJM Agreements associated with its respective SSO Supplier Responsibility Share at the Final Zonal Capacity Price for the unconstrained portion of the region; and

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

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

## **ARTICLE 1**

### **DEFINITIONS**

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

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

**“Ancillary Services”** has the meaning set forth in the PJM Agreements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Defaulting Party” has the meaning set forth in Section 7.1.

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

“Delivery Point” means the DEOK Load Zone as defined within PJM.

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

“DEOK Load Zone” means that set of electrical locations, designated by PJM as Pnode ID number 124076095, determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption for Duke Energy Ohio within PJM and used for the purposes of scheduling, reporting withdrawal volumes, and settling Energy transactions at aggregated load levels, to facilitate Energy market transactions.

“Early Termination” has the meaning set forth in Section 2.3.

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

“Effective Date” has the meaning set forth in the preamble.

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

“Emergency Energy” has the meaning set forth in the PJM Agreements.



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

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

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

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

“Excess Collateral” has the meaning set forth in Section 5.7

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

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

“Final Zonal Capacity Price” has the meaning set forth in the PJM Agreements.

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

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

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

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

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

“Guaranty” means the ICT Guaranty or the Total Exposure Guaranty, as applicable.

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

“ICRT” has the meaning set forth in Section 5.3.

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

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

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

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

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

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

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

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

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

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

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

“LIBOR” means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits. For discounting purposes, the rates will be converted into a series of monthly

rates representing the equivalent forward LIBOR rate from the valuation date to the month of delivery.

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

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

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

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

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

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

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

“Market Price Hub” means a liquid pricing point located within PJM’s geographic footprint.

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

“Minimum Margin Threshold” means \$100,000.

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

“MW” means megaWatt.

“MWh” means megaWatt hour.

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

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

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

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

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

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

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

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

**“PIPP Customers”** means Customers that take service under Duke Energy Ohio’s percentage of income payment plan.

**“PJM”** means PJM Interconnection, L.L.C. or any successor organization thereto.

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

**“PJM Balancing Authority Area”** means the control area recognized by NERC as the PJM Balancing Authority Area.

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

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

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

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

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

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

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

**“Seasonal Billing Factor”** means a numerical factor, as set forth in Attachment B, one amount applicable during the summer months of June through September, and one amount applicable during the non-summer months of October through May, applied to the Price in accordance with

the provisions of Article 6 and thereby used to adjust Duke Energy Ohio's payments to SSO Suppliers.

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

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

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

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

"SSO Customers" means Residential Customers, Commercial Customers, Industrial Customers and Lighting Customers, including Special Contract Customers, but excluding PIPP Customers and interruptible service customers, taking SSO Supply from Duke Energy Ohio during the Delivery Period when either PJM or Duke Energy Ohio calls for an interruption.

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

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

“SSO Supplier” has the meaning set forth in the preamble.

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

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

“Standard Service Offer” means a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

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

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

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

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

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

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

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

## ARTICLE 2

### TERM AND TERMINATION

#### 2.1 Term

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

#### 2.2 Mutual Termination

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

#### 2.3 Early Termination

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

#### 2.4 Effect of Termination

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

## ARTICLE 3

### GENERAL TERMS AND CONDITIONS

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

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

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

(b) during the Term, each SSO Supplier shall purchase from Duke Energy Ohio (and, unless Duke Energy Ohio directs otherwise, provide payment for the same to PJM in accordance with Section 6.2(b)) the Capacity at the Final Zonal Capacity Price for the unconstrained portion of the RTO region necessary to fulfill the Capacity obligation associated with such SSO Supplier's SSO Supplier Responsibility Share pursuant to the PJM Agreements;

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

(d) each SSO Supplier shall be responsible for all other costs and expenses related to transmission and Ancillary Services in connection with the provision of SSO Supply in proportion to its SSO Supplier Responsibility Share. PJM billing statement line items are set forth in Attachment F;

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

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

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



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

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

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

Duke Energy Ohio hereby agrees as follows:

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

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

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

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

(i) charges assessed under, Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Services), Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services), "Network Integration Transmission Service (NITS)" under the PJM Agreements, and Schedule 12 (Transmission Enhancement Charge) of the PJM Tariff; Generation Deactivation charges; and charges that result from PJM's implementation of its revised Economic Load Response (ELR) program, in compliance with the FERC March 15, 2011, Order (Order No. 745) regarding demand response compensation in organized wholesale energy markets;

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

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

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

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

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

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

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

### **3.4 Reliability Guidelines**

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

### **3.5 Regulatory Authorizations**

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

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

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

In the event PJM imposes a Default Allocation Assessment upon Duke Energy Ohio relating to a default during the Term, Duke Energy Ohio may, in its sole discretion, invoice each SSO Supplier, based on its SSO Supplier Responsibility Share, for amounts determined, in Duke

Energy Ohio's sole discretion, to be properly payable by such SSO Supplier from the Default Allocation Assessment and each SSO Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Section 11.

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

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

### **3.8 Sales for Resale**

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

## **ARTICLE 4**

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

#### **4.1 Scheduling**

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

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

#### **4.2 Load Forecasting**

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

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

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

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

The Parties agree and acknowledge that service to SSO Customers may be lost due to storms, weather, accidents, breakage of equipment or other events beyond the reasonable control of Duke Energy Ohio affecting the transmission and distribution facilities of Duke Energy Ohio. No Party will have any liability to any other Party for the occurrence of such events. In no event will a loss of service to a Customer affect a Party's obligation to make any payments then due or becoming due with respect to performance rendered prior to such loss of service.

#### **4.5 PJM Requirements**

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

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

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

## **ARTICLE 5**

### **CREDIT AND PERFORMANCE SECURITY**

#### **5.1 Applicability**

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

During the Term, each SSO Supplier or its Guarantor, if applicable, that has been granted an Independent Credit Threshold or a Credit Limit agrees to provide as soon as practicable (i) after the end of each fiscal year, complete annual audited financial statements (including footnotes), and (ii) after the end of each fiscal quarter, complete quarterly unaudited financial statements (including footnotes). If such financial statements are readily and timely available from the SSO Supplier's website or other public website such as [www.sec.gov](http://www.sec.gov), then this requirement shall be deemed to be satisfied.

#### **5.2 Creditworthiness Determination**

Duke Energy Ohio will determine the creditworthiness of an SSO Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). Duke Energy Ohio will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time,

including whenever it becomes aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by Duke Energy Ohio of its or its Guarantor's creditworthiness. Duke Energy Ohio's credit re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30) days after receiving a fully documented request. Duke Energy Ohio shall provide the rationale for its determination of the Credit Limit and any resulting security requirement and such determination shall be deemed final and conclusive. Duke Energy Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each SSO Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, Duke Energy Ohio may specify other types of financial statements that will be accepted. If Duke Energy Ohio determines in its sole discretion that it is unable to adequately assess an SSO Supplier's or Guarantor's creditworthiness or the credit rating of an SSO Supplier or its Guarantor is insufficient, such SSO Supplier shall be required to post ICR Collateral in accordance with Section 5.4(d) and Margin Collateral in accordance with Section 5.7.

### **5.3 Independent Credit Requirement**

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of each SSO Supplier under this Agreement will initially be the sum of the amounts set forth on Attachment C-1 at the inception of the Original Delivery Period for each Tranche and will decline throughout the Term in accordance with the schedule set forth on Attachment C-1.

### **5.4 Independent Credit Threshold**

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

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

i. the SSO Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or

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

Credit Rating of the SSO Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	Not applicable
BBB+	Baa1	BBB+	10%	Not applicable
BBB	Baa2	BBB	10%	Not applicable
BBB-	Baa3	BBB-	8%	Not applicable
BB+	Ba1	BB+	2%	\$3,000,000
BB	Ba2	BB	1%	\$1,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

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

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

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

- i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or
- ii. the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

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

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



Person executing this Agreement on behalf of the SSO Supplier has the authority to execute this Agreement and that the governing board of such SSO Supplier has approved the execution of this Agreement. Duke Energy Ohio will have full discretion, without liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

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

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

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

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. A "market value" for each Tranche will be determined at the time the Solicitation is completed based on the then prevailing market prices, as described further in Attachment C-2. At the time the Solicitation is completed, the

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

## **5.6 Credit Limit**

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

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

common, such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

Credit Rating of the SSO Supplier or its Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the applicable Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
A- and above	A3 and above	A- and above	16%	\$60,000,000
BBB+	Baa1	BBB+	10%	\$50,000,000
BBB	Baa2	BBB	10%	\$40,000,000
BBB-	Baa3	BBB-	8%	\$30,000,000
BB+	Ba1	BB+	2%	\$5,000,000
BB	Ba2	BB	1%	\$2,500,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

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

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

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

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

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

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

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

ii. For the Guarantor of an SSO Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Guarantor is organized that (A) the Guarantor is duly incorporated and existing in such foreign jurisdiction; (B) the Total Exposure Amount Guaranty is the binding and enforceable obligation of the Guarantor in such foreign jurisdiction and does not violate any local law or the Guarantor's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other

requirements of governmental, judicial or public bodies in such foreign jurisdiction have been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Total Exposure Amount Guaranty and the performance by the Guarantor of its obligations thereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Guarantor that the Person executing the Total Exposure Amount Guaranty on behalf of the Guarantor has the authority to execute the Total Exposure Amount Guaranty and that the governing board of such Guarantor has approved the execution of the Total Exposure Amount Guaranty. Duke Energy Ohio will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

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

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

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

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

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

Margin Collateral being held by Duke Energy Ohio that is not needed to satisfy the Margin ("Excess Collateral"), will be returned to the SSO Supplier upon receipt of a written request from the SSO Supplier; provided, however, that the SSO Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the SSO Supplier posted cash and notice is received by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the SSO Supplier posted cash and notice is received by Duke Energy Ohio after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business

Day following the date of notice. If the SSO Supplier posted a Letter of Credit, the Excess Collateral shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank, unless in each case the SSO Supplier agrees in writing to extend such period for returning the Excess Collateral. The SSO Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral.

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

To secure its obligations under this Agreement, the SSO Supplier hereby grants to Duke Energy Ohio a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of Duke Energy Ohio or partially in the name of Duke Energy Ohio or held for the benefit of Duke Energy Ohio and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by Duke Energy Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The SSO Supplier agrees to take such action as reasonably required to create and perfect Duke Energy Ohio's first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where an SSO Supplier is the Defaulting Party or an Early Termination Date (whether or not such SSO Supplier was the Defaulting Party), Duke Energy Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of Duke Energy Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such SSO Supplier in the possession of Duke Energy Ohio, whether held in connection with this Agreement or any Other SSO Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such SSO Supplier; and (ii) draw on any outstanding Letter of Credit provided by such SSO Supplier. Duke Energy Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such SSO Supplier's obligations under this Agreement and under any Other SSO Supplier Agreement, and such SSO

Supplier shall remain liable for any amounts owing to Duke Energy Ohio after such application, subject to Duke Energy Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

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

**5.9 Acceptable Forms of Security**

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

- (a) Cash credited to a deposit account of Duke Energy Ohio; and
- (b) A Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year or shorter periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If Duke Energy Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the SSO Supplier will be required to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in this Section 5.9. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to Duke Energy Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the SSO Supplier fails to supply a substitute Letter of Credit as required, then Duke Energy Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Margin Collateral or ICR Collateral, as applicable.

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

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



extended in writing by Duke Energy Ohio. For avoidance of doubt, SSO Supplier may elect to substitute a cash deposit for the Letter of Credit within the time frame specified herein.

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

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

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

(b) If the lowest credit rating (whether corporate or issuer rating or unsecured senior debt rating) used to determine the SSO Supplier's ICT or its Credit Limit adversely changes, Duke Energy Ohio will require ICR Collateral or Margin Collateral from such SSO Supplier in accordance with Sections 5.4, 5.6 and 5.7. The additional security must be in a form acceptable to Duke Energy Ohio, as specified in Section 5.9.

#### **5.11 Interest on Cash Held by Companies**

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

**5.12 No Endorsement of SSO Supplier**

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

**ARTICLE 6**

**BILLING, PAYMENT AND NETTING**

**6.1 Invoice Statement**

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

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

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

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

(d) Duke Energy Ohio or the SSO Supplier, as the case may be, will make payment on or before the twentieth (20<sup>th</sup>) day of each calendar month. If such day falls on a Saturday, Sunday or any other day which is a legal holiday or a day on which banking institutions are

closed, payment will be due the following Business Day. All such payments shall be made by electronic transfer to an account designated in writing by each respective Party.

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

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

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

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

## **6.2 PJM Billing; Third Party Billing**

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

(b) For Capacity purchased from Duke Energy Ohio at the Final Zonal Capacity Price for the unconstrained portion of the RTO region by an SSO Supplier pursuant to Section 3.1(b), such SSO Supplier shall, unless Duke Energy Ohio directs otherwise, be invoiced and submit payment for such Capacity on behalf of Duke Energy Ohio directly to PJM in accordance with the billing practices set forth in the PJM Agreements.

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

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

## **ARTICLE 7**

### **BREACH AND DEFAULT**

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

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

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

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

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

(d) the Defaulting Party becomes Bankrupt;

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

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

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

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

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

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

(k) with respect to a Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any material respect when made or when deemed made or repeated; (ii) the failure of such Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty made in connection with this Agreement and such failure shall not be remedied within three (3) Business Days after written notice; (iii) the failure of such Guarantor's Guaranty to be in full force and effect (other than in accordance with its terms) prior to the satisfaction of all obligations of the Defaulting Party under this Agreement without the written consent of Duke Energy Ohio; (iv) such Guarantor repudiates, disaffirms, disclaims, or rejects, in whole or in part, or challenges the validity of the Guaranty; or (v) such Guarantor becomes Bankrupt.

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

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

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

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

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

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

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

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

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

(a) **Default Damages.** Subject to Section 7.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

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

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

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an SSO Supplier is the Defaulting Party and the Termination Payment is due to such SSO Supplier, Duke Energy Ohio will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the

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

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

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

#### **7.4 SSO Supplier Right to Assume**

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by Duke Energy Ohio with respect to such SSO Supplier, then Duke Energy Ohio, subject to Legal Authorities, may offer all of the non-defaulting SSO Suppliers the



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

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

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

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

The rights of the Non-Defaulting Party under this Agreement, including Sections 7.2, 7.3 and 7.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## ARTICLE 8

### REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

(g) it is acting for its own account, has made its own independent decision to enter into this Agreement, is not relying upon the advice or recommendations of any other Party in so

doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 9

### RISK OF LOSS; LIMITATION OF LIABILITY

#### 9.1 Risk of Loss

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

Supplier warrants that it will deliver the SSO Supply to Duke Energy Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

**9.2 Limitation of Liability**

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

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

**ARTICLE 10**

**INDEMNIFICATION**

**10.1 Indemnification**

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

Suppliers or for which the SSO Supplier assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the Indemnification Losses were caused wholly or in part by the gross negligence or willful misconduct of Duke Energy Ohio. Duke Energy Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

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

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or

proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

## **ARTICLE 11**

### **DISPUTE RESOLUTION**

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

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

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

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

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

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

**ARTICLE 12**

**MISCELLANEOUS PROVISIONS**

**12.1 Assignment**

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

(b) An SSO Supplier may not assign this Agreement or any rights or obligation hereunder without the prior written consent of Duke Energy Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, an SSO Supplier may, without the consent of Duke Energy Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such SSO Supplier. Under (b)(ii) and (b)(iii) above, the assigning SSO Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit



requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

## 12.2 Notices

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

To Duke Energy Ohio:

### **NOTICES & CORRESPONDENCE:**

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

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

### **INVOICES:**

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

### **CREDIT:**

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

### **PAYMENTS:**

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

### **SCHEDULING:**

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

Phone Number: \_\_\_\_\_

**To SSO Supplier:**

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

**12.3 General**

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

**12.4 Governing Law**

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

**12.5 Standard of Review**

Except as provided in Sections 7.4 and 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in 12.6, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act, absent the written agreement of the Parties to change any provisions. Other than as expressly

permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

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

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

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

#### **12.7 Confidentiality**

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

(b) In the event of disclosure pursuant to 12.7(a)(i), Duke Energy Ohio will attempt to notify the SSO Supplier in advance of such disclosure. However, neither Duke Energy Ohio

nor its employees, lenders, counsel, accountants, advisors or agents, will not be responsible to the SSO Suppliers for any such disclosure and Duke Energy Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the SSO Suppliers, if Duke Energy Ohio deems such disclosure necessary.

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

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

## **12.8 Taxes**

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

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

#### **12.9 Record Retention**

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

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

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

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

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

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

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

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

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

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

(g) “Shall” and “will” have equal force and effect.

#### **12.11 Counterparts**

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

[Signatures appear on next pages]

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

DUKE ENERGY OHIO, INC.

By \_\_\_\_\_

Name:

Title:

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[SSO SUPPLIER]

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

Name:

Title



**ATTACHMENTS**

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

ATTACHMENT A

SSO SUPPLIER RESPONSIBILITY SHARE

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

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

Address for Notice:

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

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

Copy to:

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

Article 5 Notices:

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

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

Name:  
Address: (\_\_\_\_\_  
Telephone:  
Facsimile:  
E-mail:

Copy to:

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

Article 5 Notices:

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

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

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

Copy to:

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

Article 5 Notices:

Name:  
Address:  
Telephone:

Facsimile:  
E-mail:

[SSO SUPPLIER]

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

Name:

Title:

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

The Seasonal Billing Factors are as follows:

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

**ATTACHMENT C-1**  
**INDEPENDENT CREDIT REQUIREMENT PER TRANCHE**

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

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

ATTACHMENT C-2

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

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

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

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

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

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



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

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

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

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

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

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

TABLE 1

Market Valuation on Solicitation Closing Date:

[VALUES ARE FOR ILLUSTRATION ONLY]

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

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

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

TABLE 2

Adjusted Market Prices at Solicitation Closing Date

[VALUES ARE FOR ILLUSTRATION ONLY]

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

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

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

TABLE 3

Market Valuation Immediately Prior to Start of Delivery Period

[VALUES ARE FOR ILLUSTRATION ONLY]

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

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

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

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

ATTACHMENT D  
FORM OF GUARANTY

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

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

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

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

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

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

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

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

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

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

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

If to Duke Energy Ohio, to:

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

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

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

If to the Guarantor, to:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

[GUARANTOR]

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

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

ATTACHMENT E  
FORM OF SSO SUPPLIER Letter of Credit

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

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

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

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

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

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

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

8. As used herein:

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

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

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

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

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

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

Very truly yours,

(Bank)

\_\_\_\_\_

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

Name:

Title:

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

Name:

Title:

Annex 1 to Letter of Credit

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

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

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

\_\_\_\_\_ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply Agreement.



3. The amount to be received by Duke Energy Ohio, Inc. is \$\_\_\_\_\_.

4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

Annex 2 to Letter of Credit

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

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

ON [Business Day set forth in Paragraph 5]

PAY TO: Duke Energy Ohio, Inc.

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

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

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

(Bank)

(Address)

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

Annex 3 to Letter of Credit

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_(date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Beneficiary's Address]

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

Agreed and Accepted

(Bank)

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

Title:

Date:

APPLICANT NAME

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

Name:

Title:

Date:

Annex 4 to Letter of Credit

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

Annex 5 to Letter of Credit

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_

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

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

Re: Our Letter of Credit No. \_\_\_\_\_ presently in the aggregate  
amount of USD \_\_\_\_\_ issued for the account of  
\_\_\_\_\_ and expiring on \_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new  
Letter of Credit No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new  
Letter of Credit No. \_\_\_\_\_ will, aside from the expiration date, be in the  
amount and form of our Letter of Credit No. \_\_\_\_\_.

Very truly yours,

BANK \_\_\_\_\_

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

Name:

Title:

Date:

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

cc: \_\_\_\_\_ (Applicant Name)

Annex 6 to Letter of Credit

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

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

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For the value received, the undersigned Beneficiary hereby irrevocably transfers to:

\_\_\_\_\_

(Name of Transferee)

\_\_\_\_\_

(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.



By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very Truly Yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

\_\_\_\_\_

(Authorized signature of authenticating party)

Name

Title

ATTACHMENT F  
SAMPLE PJM INVOICE

<b>PJM Billing Statement Line Items</b>		
<b>ID #</b>	<b>Resp.</b>	<b>CHARGES</b>
1000	SSO S	Amount Due for Interest on Past Due Charges
1100	EDC	Network Integration Transmission Service
1108	EDC	Transmission Enhancement
1109	EDC	Midwest ISO Transmission Expansion Plan Assessment
1110	SSO S	Direct Assignment Facilities
1120	SSO S	Other Supporting Facilities
1130	SSO S	Firm Point-to-Point Transmission Service
1133	SSO S	Firm Point-to-Point Transmission Service Resale
1140	SSO S	Non-Firm Point-to-Point Transmission Service
1143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
1200	SSO S	Day-ahead Spot Market Energy
1205	SSO S	Balancing Spot Market Energy
1210	SSO S	Day-ahead Transmission Congestion
1215	SSO S	Balancing Transmission Congestion
1218	SSO S	Planning Period Congestion Uplift
1220	SSO S	Day-ahead Transmission Losses
1225	SSO S	Balancing Transmission Losses
1230	SSO S	Inadvertent Interchange
1240	SSO S	Day-ahead Economic Load Response
1241	SSO S	Real-time Economic Load Response

1245	SSO S	Emergency Load Response
1250	SSO S	Meter Error Correction
1260	SSO S	Emergency Energy
1301	SSO S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	SSO S	PJM Scheduling, System Control and Dispatch Service - FTR Administration
1303	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	SSO S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	SSO S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	SSO S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1307	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset
1308	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1313	SSO S	PJM Settlement, Inc.
1314	SSO S	Market Monitoring Unit (MMU) Funding
1315	SSO S	FERC Annual Charge Recovery
1316	SSO S	Organization of PJM States, Inc. (OPSI) Funding
1317	SSO S	North American Electric Reliability Corporation (NERC)
1318	SSO S	Reliability First Corporation (RFC)
1320	EDC	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
1330	EDC	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	SSO S	Regulation and Frequency Response Service
1350	SSO S	Energy Imbalance Service
1360	SSO S	Synchronized Reserve
1365	SSO S	Day-ahead Scheduling Reserve
1370	SSO S	Day-ahead Operating Reserve
1371	SSO S	Day-ahead Operating Reserve for Load Response
1375	SSO S	Balancing Operating Reserve
1376	SSO S	Balancing Operating Reserve for Load Response
1377	SSO S	Synchronous Condensing
1378	SSO S	Reactive Services
1380	SSO S	Black Start Service
1400	SSO S	Load Reconciliation for Spot Market Energy
1410	SSO S	Load Reconciliation for Transmission Congestion
1420	SSO S	Load Reconciliation for Transmission Losses
1430	SSO S	Load Reconciliation for Inadvertent Interchange
1440	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	SSO S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	SSO S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	SSO S	Load Reconciliation for FERC Annual Charge Recovery
1446	SSO S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	SSO S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	SSO S	Load Reconciliation for Reliability First Corporation (RFC)
<b>1450</b>	<b>EDC</b>	<b>Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service</b>
1460	SSO S	Load Reconciliation for Regulation and Frequency Response Service
1470	SSO S	Load Reconciliation for Synchronized Reserve
1475	SSO S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	SSO S	Load Reconciliation for Balancing Operating Reserve
1480	SSO S	Load Reconciliation for Synchronous Condensing
1490	SSO S	Load Reconciliation for Reactive Services
1500	SSO S	Financial Transmission Rights Auction
1600	N/A	RPM Auction
1610	N/A	Locational Reliability
1650	N/A	Auction Specific MW Capacity Transaction
1660	N/A	Demand Resource and ILR Compliance Penalty
1661	N/A	Capacity Resource Deficiency
1662	N/A	Generation Resource Rating Test Failure
1663	N/A	Qualifying Transmission Upgrade Compliance Penalty
1664	N/A	Peak Season Maintenance Compliance Penalty
1665	N/A	Peak-Hour Period Availability
1666	N/A	Load Management Test Failure
1670	SSO S	FRR LSE Reliability
1687	SSO S	FRR LSE Schedule 9-5
1688	SSO S	FRR LSE Schedule 9-6
1920	SSO S	Station Power
<b>1930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>1932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
1980	SSO S	Miscellaneous Bilateral
1995	SSO S	PJM Annual Membership Fee

1999	SSO S	PJM Customer Payment Default

PJM Credits		
ID#	Resp.	CREDITS
2100	TO	Network Integration Transmission Service
2106	TO	Non-Zone Network Integration Transmission Service
2108	TO	Transmission Enhancement
2109	TO	Midwest ISO Transmission Expansion Plan Assessment
2110	TO	Direct Assignment Facilities
2120	TO	Other Supporting Facilities
2130	TO	Firm Point-to-Point Transmission Service
2132	SSO S	Internal Firm Point-to-Point Transmission Service
2133	SSO S	Firm Point-to-Point Transmission Service Resale
2140	SSO S	Non-Firm Point-to-Point Transmission Service
2142	SSO S	Internal Non-Firm Point-to-Point Transmission Service
2143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
2210	SSO S	Transmission Congestion
2217	SSO S	Planning Period Excess Congestion
2218	SSO S	Planning Period Congestion Uplift
2220	SSO S	Transmission Losses
2240	N/A	Day-ahead Economic Load Response
2241	N/A	Real-time Economic Load Response
2245	N/A	Emergency Load Response
2260	N/A	Emergency Energy
2320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service
2330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service
2340	N/A	Regulation and Frequency Response Service
2350	N/A	Energy Imbalance Service
2360	N/A	Synchronized Reserve
2365	N/A	Day-ahead Scheduling Reserve
2370	N/A	Day-ahead Operating Reserve
2371	N/A	Day-ahead Operating Reserve for Load Response
2375	N/A	Balancing Operating Reserve
2376	N/A	Balancing Operating Reserve for Load Response
2377	N/A	Synchronous Condensing
2378	N/A	Reactive Services
2380	N/A	Black Start Service

2420	SSO S	Load Reconciliation for Transmission Losses
2500	SSO S	Financial Transmission Rights Auction
2510	SSO S	Auction Revenue Rights
2600	N/A	RPM Auction
2620	N/A	Interruptible Load for Reliability
2630	N/A	Capacity Transfer Rights
2640	N/A	Incremental Capacity Transfer Rights
2650	N/A	Non-Unit Specific Capacity Transaction
2660	N/A	Demand Resource and ILR Compliance Penalty
2661	N/A	Capacity Resource Deficiency
2662	N/A	Generation Resource Rating Test Failure
2663	N/A	Qualifying Transmission Upgrade Compliance Penalty
2664	N/A	Peak Season Maintenance Compliance Penalty
2665	N/A	Peak-Hour Period Availability
2666	N/A	Load Management Test Failure
2687	EDC	<b>FRR LSE Schedule 9-5</b>
2688	EDC	<b>FRR LSE Schedule 9-6</b>
2930	EDC	<b>Generation Deactivation</b>
2932	EDC	<b>Generation Deactivation Refund</b>
2980	SSO S	Miscellaneous Bilateral





**Attachment G**  
**Glossary for**  
**Duke Energy Ohio, Inc.'s**  
**Competitive Bidding Process Auctions**

This Glossary applies to the competitive bidding process ("CBP") auctions for Duke Energy Ohio, Inc. ("Duke Energy Ohio") to procure supply for the provision of Standard Service Offer supply ("SSO Supply") for customers that take retail generation service from Duke Energy Ohio. Some terms contained in this Glossary may also be defined in the Master Standard Service Offer Supply Agreement ("Master SSO Supply Agreement"). When there is a conflict between this Glossary and the Master SSO Supply Agreement, the Master SSO Supply Agreement will take precedence.

**Advisor** means a person or persons who will be advising or assisting the Qualified Bidder with respect to bidding strategy, estimation of the value of any Tranche, or estimation of the risks associated with any Tranche.

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

**Alternate Guaranty Form** has the meaning set forth in Part 1 Application.

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

**Announced Price** means the price of a Product in effect during a bidding round of the auction.

**Applicant** means a Party that has submitted or indicated that it is going to submit a Part 1 Application.

**Applicant's Legal Representative in Ohio** means legal counsel or a representative agent who has an address in Ohio and is authorized and agrees to accept service of process on the Applicant's behalf.

**Associated and Association** means a Qualified Bidder is associated with another Qualified Bidder if the two Bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. If two Qualified Bidders are Associated, then there is an Association between them.

**Auction Manager** means CRA International, Inc. d/b/a Charles River Associates ("CRA") team working on this CBP.

**Auction Software** means the suite of tools available on the Bidding Website during a live auction.

**Authorized Delegate (Delegate)** means the Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

**Authorized Representative** means a designated person who is authorized to represent the Applicant in the CBP. The Authorized Representative must ensure that only authorized persons act on behalf of the Applicant in the CBP and is responsible for ensuring that no Confidential Information is disclosed improperly.

**Backup Bidding Fax Number** means any telephone number provided to Registered Bidders for use in submitting a bid by fax in the event of a complication with access to the Bidding Website.

**Bidders** means any parties that may become Qualified Bidders in the CBP or that submit bids in the CBP.

**Bidding Agreement** means an arrangement involving joint or coordinated bidding with any other Party.

**Bidding Consortium** means a group of separate businesses or business people joining together to submit joint bids in the auction.

**Bidding Website** means the secure Website used by Registered Bidders to participate in the CBP auction. The URL address for the Bidding Website will be provided to Registered Bidders.

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

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

**CBP** means Competitive Bidding Process.

**Charge** means any fee, charge, PJM charge, the Energy Share Adjustment if in favor of the Company, or any other amount that is billable by the Company to the SSO Supplier under the Master SSO Supply Agreement.

**Commission ("PUCO")** means the Public Utilities Commission of Ohio.

**Company** means Duke Energy Ohio.

**Competitive Retail Electric Service Supplier (CRES Supplier)** means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide

Standard Service Offer pursuant to retail open access programs approved by the PUCO to Customers who are not SSO Customers of the Company.

**Confidential Information** means two types of information. Confidential information relative to bidding strategy means information relating to a Bidder's bid, written or oral, which if it were to be made public or known to another Bidder would be likely to have an effect on any of the bids that another Bidder would be willing to submit in the CBP. Confidential information regarding the CBP means information, written or oral, that is not released publicly by the PUCO or the Auction Manager and that a Bidder acquires as a result of participating in the CBP, which if it were to be made public could impair the integrity of the current or future CBPs, impair the ability of the Company to hold future CBPs, harm consumers, or injure Bidders or Applicants.

**Confirmed Bid** means a bid submitted by a Bidder that is confirmed by the Bidding Website. A bid submitted by a Bidder is confirmed only if the Bidder receives a unique confirmation ID and time-stamp by the Bidding Website server. If the Bidder submits a bid but fails to complete the last step to confirm the bid, that bid will not be considered a Confirmed Bid.

**Contingency Plan** means in the event that fewer Tranches than a Product's Tranche Target are purchased in the auction, the Company will implement a Contingency Plan for the unfilled Tranches.

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

**Credit-Based Tranche Cap** means the maximum possible Initial Eligibility for a Qualified Bidder based on its credit rating.

**Credit Documents** means Letter of Credit, Letter of Intent to Provide a Guaranty, Letter of Reference, or any other credit support document.

**Credit Limit** means the amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 5.6 of the Master SSO Supply Agreement, granted by the Company to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO Supplier.

**Credit Representative** means the Applicant's designated in-house Credit Representative who can answer questions or provide information about the Applicant's credit with respect to the requirements for the CBP.

**Customer** means any Person who receives distribution service from the Company in accordance with the Legal Authorities.

**Day(s)** means to Business Day(s), unless noted otherwise.

**Defaulting Party** has the meaning set forth in Section 7.1 of the Master SSO Supply Agreement.

**Delegate (Authorized Delegate)** means a Person authorized by the Applicant to be the point of contact for the Auction Manager when so designated by the Authorized Representative.

**Delivery Period** means the Original Delivery Period, unless the Master SSO Supply Agreement is terminated earlier in accordance with its provisions.

**Effective Date** has the meaning set forth in the preamble of the Master SSO Supply Agreement.

**Eligibility** means the maximum number of Tranches a Bidder can bid across all Products in a bidding round. From round to round, a Bidder's Eligibility cannot increase; it can only stay the same or decrease.

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

**FERC** means the Federal Energy Regulatory Commission or any successor thereto.

**Full Requirements Service** includes Energy, Capacity, market-based transmission service and market-based transmission ancillaries, and any other LSE service or other service as may be required by PJM to serve the SSO Load of Duke Energy Ohio.

**Goodwill** means an intangible asset that is the amount by which the purchase price of an acquired entity exceeds its net tangible asset value.

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

**Guarantor** means any Person having the authority and agreeing to guarantee an SSO Supplier's financial obligations under the Master SSO Supply Agreement, provided that such party meets the Company's creditworthiness requirements for SSO Suppliers.

**Guaranty** means the ICT Guaranty or the Total Exposure Amount Guaranty, as applicable.

**Help Desk** means the resource available to provide technical assistance during a live auction.

**ICR Collateral** has the meaning set forth in Section 5.4(d) of the Master SSO Supply Agreement.

**ICRT** has the meaning set forth in Section 5.3 of the Master SSO Supply Agreement.

**ICT Guaranty** means a guaranty, in the form substantially set forth in Attachment D of the Master SSO Supply Agreement, provided by a Guarantor in favor of the Company guaranteeing an SSO Supplier's financial obligations in connection with ICT.

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

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

**Indicative Offer** means a Qualified Bidder's Indicative Offer that specifies two (2) numbers of Tranches for each Product in the auction. For each Product, the first number represents the number of Tranches that the Qualified Bidder is willing to serve at the Minimum Starting Price for the Product and the second number represents the number of Tranches that the Qualified Bidder is willing to serve at the Maximum Starting Price for the Product.

**Information Website** means [www.duke-energyohiocbp.com](http://www.duke-energyohiocbp.com) which is the Website that will be the primary online source of information about the CBP auctions.

**Initial Eligibility** means Bidder's Eligibility for round 1 of the auction.

**Joint Venture** means an enterprise entered into by two or more people for profit with the purpose of bidding in the CBP. A Joint Venture has most of the elements of a partnership, such as shared management, the power of each venture to bind the others in the business, division of

profits, and joint responsibility for losses. However, unlike a partnership, a Joint Venture anticipates a specific area of activity and/or period of operation, so after the purpose is completed, bills are paid, profits (or losses) are divided, and the Joint Venture is terminated.

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

**Kilowatt-hour ("kWh")** means one Kilowatt of electric power used over a period of one hour.

**Legal Representative** means legal counsel or a representative agent who is authorized and agrees to accept service of process on the Applicant's behalf; must have an address in Ohio.

**Letter of Credit** means a standby irrevocable letter of credit acceptable to the Company in substantially similar form as set forth in Attachment E of the Master SSO Supply Agreement and including all of the requirements specifically set forth in Section 5.9 of the Master SSO Supply Agreement.

**Letter of Intent to Provide a Guaranty** means a document that may be issued by Qualified Bidder's Guarantor during the Part 2 Application process. The letter indicates that an ICT Guaranty will be provided once the Master SSO Supply Agreement is signed.

**Letter of Reference** means a document that may be issued by a Qualified Bidder's bank during the Part 2 Application process. The letter specifies the amount of revolving credit provided to the Bidder by the bank. The letter also states that there is sufficient unused availability to issue a Letter of Credit for the amount indicated in the Bidder's Part 2 Application.

**Load Serving Entity (LSE)** has the meaning set forth in the applicable PJM Agreements.

**Master Standard Service Offer Supply Agreement (Master SSO Supply Agreement or Agreement)** means the standard contract that will be used by the winning Bidders and Duke Energy Ohio.

**Maximum Starting Price:** The Maximum Starting Price is the maximum Announced Price for a Product that can be set for round 1.

**Megawatt (MW)** means one thousand Kilowatts.

**Megawatt-hour (MWh)** means one Megawatt of electric power used over a period of one hour.

**Minimum Starting Price:** The Minimum Starting Price is the minimum Announced Price for a Product that can be set for round 1.

**NERC** means the North American Electric Reliability Council or its successor.

**Network Integrated Transmission Services ("NITS")** has the meaning set forth in the applicable PJM Agreements.

**Notification of Qualification** means the notification sent by the Auction Manager to an Applicant once the Applicant becomes a Qualified Bidder. The Notification is in the format set forth in the Part 1 Application.

**Notification to Registered Bidders** means the notification sent by the Auction Manager to the Qualified Bidder once the Qualified Bidder becomes a Registered Bidder. The Notification is in the format set forth in Part 2 Application.

**Over-Subscribed:** means supply for a Product (*i.e.*, the number of Tranches bid) is greater than the Product's Tranche Target.

**Part 1 Application** means the first of the two parts of the application process for prospective Bidders to participate in the CBP.

**Part 1 Application Due Date** means the date specified in the timeline on the Information Website.

**Part 2 Application** means the second of the two parts of the application process for prospective Bidders to participate in the CBP.

**Part 2 Application Due Date** means the date specified in the timeline on the Information Website.

**Party** has the meaning set forth in the preamble to the Master SSO Supply Agreement, and includes such Party's successors and permitted assigns.

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

**PIPP Customer** means any customer who takes service under Duke Energy Ohio's Percentage of Income Payment Plan (PIPP) as of January 1, 2012, and any customer who is thereafter enrolled in the PIPP program through May 31, 2015.

**PJM** means the PJM Interconnection, LLC or any successor organization thereto.

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



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

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

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

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

**Pre-Bid Security** means the Pre-Bid Security posted by each Qualified Bidder sufficient for its Indicative Offer. Pre-Bid Security to be posted by a Qualified Bidder included in its Part 2 Application consists of cash or a Letter of Credit and, if necessary, a Letter of Reference and/or a Letter of Intent to provide a Guaranty. A Qualified Bidder in the CBP is notified upon qualification whether a Letter of Reference or a Letter of Intent to provide a Guaranty is required.

**Price Decrement** means the reduction in the Announced Price for a given Product from one round to the next round of the auction.

**Product** means the SSO Load of Duke Energy Ohio for the Delivery Period, as determined by the PUCO.

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

**PUCO Consultant** means any firm and/or individual(s) retained by the PUCO for purposes of assisting the PUCO or PUCO Staff.

**Qualified Bidder** means a Party that has successfully completed a Part 1 Application.

**Registered Bidder** means a Party that has successfully completed a Part 2 Application.

**Registered User** means a Party that has registered through the Information Website to receive information about the CBP.

**Service Territory** means the geographic areas of the State of Ohio in which the Company serves Customers.

**Solicitation** means the Competitive Bidding Process by which the counterparty, quantity, pricing and other terms of the Master SSO supply Agreement are established.

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

**SSO Customers** means Residential Customers, Commercial Customers, Industrial Customers and Lighting Customers, including Special Contract Customers, but excluding PIPP Customers and interruptible service customers, taking SSO Supply from Duke Energy Ohio during the Delivery Period when either PJM or Duke Energy Ohio calls for an interruption.

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

**SSO Service** means Standard Service Offer service that is not provided by a CRES supplier.

**SSO Supplier** has the meaning set forth in the preamble of the Master SSO Supply Agreement.

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

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

**Standard Service Offer** means a market-based standard service offer of all competitive retail electric services necessary to maintain essential electric service to Customers, including unbundled Energy, Capacity, Ancillary Services and Firm Transmission Service, including all transmission and distribution losses, congestion and imbalance costs associated with the provision of the foregoing services, other obligations or responsibilities currently imposed or that may be imposed by PJM, and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

**Starting Price** means the announced price for a product in effect for round 1 of the auction for the product.

**Subscribed:** means a Product is subscribed if supply (*i.e.*, the number of Tranches bid) is equal to the Product's Tranche Target.

**Summer Factor:** To determine the \$/MWh price to be paid to an SSO Supplier during June 1 through August 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Summer Factor.

**Term** has the meaning set forth in Section 2.1 of the Master SSO Supply Agreement.

**Tranche** means a fixed percentage share of the SSO Load, excluding Capacity, as determined for the purposed of the Solicitation conducted to procure SSO Supply for the SSO load.

**Tranche Target** means the number of Tranches for a Product intended to be procured for the Product in the auction.

**UCC** means the Uniform Commercial Code.

**Under-Subscribed:** means a product is under-subscribed if supply (*i.e.*, the number of Tranches bid) is less than the Product's Tranche Target.

**Winning Bidder(s)** means the Registered Bidders that have won Tranches in the auction.

**Winning Price** means for a Product is the price to be paid to each Winning Bidder having won one or more Tranches for the Product.

**Winter Factor:** To determine the \$/MWh price to be paid to an SSO Supplier during January 1 through May 30 and September 1 through December 31 for a Tranche won by the SSO Supplier, the Winning Price of the Tranche is multiplied by the Winter Factor.

## Attachment H

### Formula for Calculating Duke Energy Ohio Earnings for Significantly Excessive Earnings Test

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Use actual data for Duke Energy Ohio from the FERC Form 1 for the calendar year at issue.

Net Income as shown on page 117, column (c), line (78), of the Form 1, adjusted for the following, if necessary:

- Eliminate all impacts related to the purchase accounting recorded pursuant to the Duke Energy/Cinergy Corp. merger;
- Eliminate all impacts of refunds to customers pursuant to R.C. 4928.143(F);
- Eliminate all impacts of mark-to-market accounting;
- Eliminate all impacts of material, non-recurring gains or losses, including but not limited to, the sale or disposition of assets;
- Eliminate all impacts of material, non-recurring revenue or expenses;
- Eliminate all impacts of parent, affiliated, or subsidiary companies and, to the extent reasonably feasible and prudently justified in the opinion of Duke Energy Ohio, eliminate the impacts of its natural gas distribution business.
- Only Rider ESSC revenue received while the Company directly owns the Legacy Generation Assets will be included in the SEET review. For the SEET review involving the year in which the Legacy Generation Assets are transferred, the Company's net income will be adjusted to exclude the impact of all revenue collected from Rider ESSC after the date of the transfer.

The adjusted net income will be divided by Common Equity to determine the resulting ROE. Certain adjustments will be made to Common Equity.

- Common Equity used in the calculation will be the beginning and ending average common equity of Duke Energy Ohio on a stand-alone basis (*i.e.*, equity associated with subsidiaries will be excluded and common equity will be allocated between gas and electric service to the extent practicable) except that a thirteen month average common equity balance may be used for a review of the SEET for the year in which the Company completes the transfer of its Legacy Generation assets.
- Equity will be adjusted to eliminate the acquisition premium recorded to equity pursuant to the Duke Energy/Cinergy Corp. merger.
- Eliminate the cumulative effect of the Net Income adjustments.

## **Attachment H**

If the annual return on average common equity for the relevant year, as adjusted pursuant to the above, is above 15 percent, the Company will be deemed to have had “significantly” excessive earnings. Any significantly excessive earnings shall be grossed up for taxes and refunded to customers. Any refunds will be allocated to all retail customers on the same basis as is used for allocated costs under Rider RC.

**Attachment I**

**SUMMARY OF RIDERS IMPACTED BY ELECTRIC SECURITY PLAN**

<b>Riders Unaffected by Stipulation <sup>(1)(2)</sup></b>	<b>Sheet No.</b>
Rider NM-H, Net Metering Rider – Hospitals	47
Rider NM, Net Metering Rider	48
Rider DR-IKE, Storm Recovery Rider	70
Rider DIR, Development Incentive Rider	71
Rider TS, Temporary Service	72
Rider X, Line Extension Policy	73
Rider EEPF, Electricity Emergency Procedures for Long Term Fuel Shortages.	74
Rider EEPD, Emergency Electric Procedures	75
Rider LM, Load Management Rider	76
Rider TES, Thermal Energy Storage Rider	78
Rider GP, Green Power	79
Rider EER, Energy Efficiency Revolving Loan Program Rider (currently set at \$0)	81
Rider OET, Ohio Excise Tax Rider	83
Rider USR, Universal Service Fund Rider	86
Rider PLM, Peak Load Management Program	87
Rider BTR, Base Transmission Rider <sup>(1)</sup>	89
Rider BDP, Backup Delivery Point Capacity Rider	94
Rider MDC, Meter Data Charges	95
Rider MSC, Meter Service Charges	96
Rider RTO, Regional Transmission Organization Rider	97
Rider GSS, Generation Support Service	98
Rider SBS, Optional Summary Billing Service Pilot	99
Rider DR-IM, Infrastructure Modernization Rider	104
Rider DR-ECF, Economic Competitiveness Fund Rider <sup>(2)</sup>	105
Rider DR-SAWR, Energy Efficiency Recovery Rider Rate	106
Rider DR-SAW, Energy Efficiency Recovery Rider	107
Rider UE-ED, Uncollectible Expense – Electric Distribution Rider	108

Notes: (1) PJM Schedule 1 (Scheduling, System Control, and Dispatch) removed from Rider BTR.

Notes: (2) Cost of interruptible credits to be recovered through annual updates to Rider DR-ECF.

<b>Riders Expiring per Stipulation</b>	<b>Sheet No.</b>
Rider PTC-AAC, Annually Adjusted Component Rider	51
Rider PTC-FPP, Fuel and Economy Purchased Power Rider	53
Rider SRA-CD, Capacity Dedication Rider	54
Rider SRA-SRT, System Reliability Tracker	56
Rider TCR, Transmission Cost Recovery Rider	57
Rider DRI, Distribution Reliability Investment Rider	58
Rider RTC, Regulatory Transition Charge Rider	84
Rider SC, Shopping Credit Rider	85

<b>New Riders per Stipulation</b>	<b>Sheet No.</b>
Rider UE-GEN, Uncollectible Expense Electric Generation	88
Rider RECON, Fuel and Reserve Capacity Reconciliation Rider	109
Rider AER-R, Alternative Energy Recovery Rider	110
Rider RC, Retail Capacity Rider	111
Rider RE, Retail Energy Rider	112
Rider ESSC, Electric Security Stabilization Charge <sup>(3)</sup>	113
Rider LFA, Load Factor Adjustment <sup>(3)</sup>	114
Rider SCR, Supplier Cost Reconciliation <sup>(3)</sup>	115
PIPP Customer Discount	116

Notes: (3) Riders not included in initial Application but agreed to in Stipulation.

**Attachment I**

**SUMMARY OF RIDERS IMPACTED BY ELECTRIC SECURITY PLAN**

<b>Riders Proposed in Initial Application but Withdrawn per Stipulation</b>	<b>Sheet No.</b>
Rider DR, Distribution Reliability Rider	59
Rider PSM, Profit Sharing Mechanism Rider	103

<b>Existing Base Rate Sheets Affected by Stipulation <sup>(4)</sup></b>	<b>Sheet No.</b>
Rate RS, Residential Service	30
Rate ORH, Optional Residential Service with Electric Space Heating	31
Rate TD-AM, Optional Time-of-Day Rate for Residential Service with Advanced Metering (Pilot)	32
Rate TD, Optional Time-of-Day Rate	33
Rate CUR, Common Use Residential Service	34
Rate RS3P, Residential Three-Phase Service	35
Rate RSLI, Residential Service – Low Income	36
Rider PTR, Peak Time Rebate – Residential Pilot Program	37
Rate TD-CPP_LITE	38
Rate TD-LITE	39
Rate DS, Service at Secondary Distribution Voltage	40
Rate GS-FL, Optional Unmetered for Small Fixed Loads	41
Rate EH, Optional Rate for Electric Space Heating	42
Rate DM, Secondary Distribution Service-Small	43
Rate DP, Service at Primary Distribution Voltage	44
Rate SFL-ADPL, Optional Unmetered Rate for Small Fixed Loads	46
Rate TS, Service at Transmission Voltage Primary Voltage	50
Rate SL, Street Lighting Service	60
Rate TL, Traffic Lighting Service	61
Rate OL, Outdoor Lighting Service	62
Rate NSU, Street Lighting Service for Non-Standard Units	63
Rate NSP, Private Outdoor Lighting for Non-Standard Units	64
Rate SC, Street Lighting Service – Customer Owned	65
Rate SE, Street Lighting Service	66
Rate UOLS, Unmetered Outdoor Lighting Electric Service	67
Rate OL-E, Outdoor Lighting Equipment Installation	68
Rate RTP, Real Time Pricing Program	90

Notes: (4) Base generation rates removed. List of Applicable Riders revised.