

FILE

In the Matter of the Application of Duke)
Energy Ohio for Approval of the Sale of)
Certain Electric Facilities to Butler Rural) Case No. 12-468-EL-ATR
Electric.)

RECEIVED-DOCKETS INC 201

2012 JAN 27 PM 4:09

TO

**APPLICATION
OF
DUKE ENERGY OHIO, INC.**

Comes now Duke Energy Ohio, Inc. (Duke Energy Ohio), by and through counsel, and hereby tenders its application (Application) for approval of the sale of certain facilities to Butler Rural Electric (Butler), pursuant to the authority of the Public Utilities Commission of Ohio (Commission) as set forth in R.C. 4905.05 and 4905.06.

1. Duke Energy Ohio is a public utility, as defined in R.C. 4905.02, and an electric light company, as defined in R.C. 4905.03(A)(3), and is, therefore, under the jurisdiction of the Commission.
2. Butler is an electric light company that operates its utility not for profit and, therefore, is not included within the definition of public utility, as set forth in R.C. 4905.02(A). Therefore, it is not under the jurisdiction of the Commission.
3. Duke Energy Ohio and Butler have agreed that Duke Energy Ohio will sell and Butler will purchase certain assets used in the distribution of electricity, as set forth in the Purchase and Sale Agreement (Agreement) attached hereto. The

assets to be sold by Duke Energy Ohio are used solely in the delivery of power to

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.

Technician Date Processed

a substation owned and operated by Butler and which is used by Butler for the delivery of power to Butler's end-use customers. As Butler is constructing its own line to serve its substation, replacing that currently provided by Duke Energy Ohio, Butler's line will be the only facility using the assets in question. Butler will, after the transfer, be responsible for continued maintenance of the assets. Duke Energy Ohio therefore has no further use for the assets and is able to provide the assets to Butler for inclusion in its replacement line.

4. Ohio law requires Commission approval whenever a jurisdictional public utility seeks to abandon any services or facilities.¹ In this transaction, however, no service to end-use customers is being abandoned and the facilities themselves are simply being moved from a regulated utility to a nonregulated utility. In previous analogous situations, the Commission has determined that such transfers are not tantamount to an abandonment of service or facilities and are not subject to Commission review under R.C. 4905.20 and 4905.21.² R.C. 4905.48 is also inapplicable to the proposed transfer, as Butler is not a public utility.
5. The Commission has determined that, in such situations, it will exercise its general supervisory powers under R.C. 4905.05 and 4905.06 to ensure that the proposed transfer will result in no interruption of adequate service to the utility's existing customers.³
6. Duke Energy Ohio makes the following representations, regarding the continuation of adequate service to its customers:

¹ R.C. 4905.20; 4905.21.

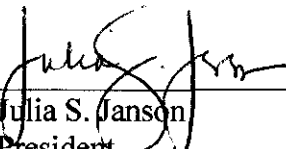
² See, e.g., *In the Matter of the Joint Application of The East Ohio Gas Company d/b/a Dominion East Ohio, Constitution Gas Transport Co., Inc., and Knox Energy Cooperative Association, Inc., for Approval of the Transfer of Assets and Substitution of Service*, Case No. 11-4324-GA-ATR, Finding and Order (August 17, 2011).

³ *Id.*

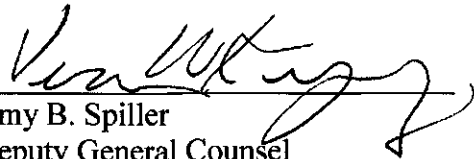
- a. The only customer that will be affected by this transaction is Butler.
- b. After completion of the proposed transaction, Butler will no longer be purchasing any services from Duke Energy Ohio.
- c. All customers of Duke Energy Ohio will continue to be provided with uninterrupted and adequate electric service, with no consequent impact on just and reasonable rates.

WHEREFORE, Duke Energy Ohio respectfully requests that the Commission approve the transaction described herein and render its decision on this matter as soon as practicable.

Respectfully submitted,
DUKE ENERGY OHIO, INC.



Julia S. Janson
President

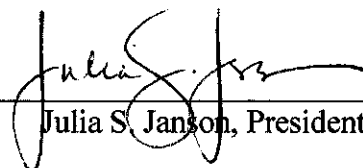


Amy B. Spiller
Deputy General Counsel
Jeanne W. Kingery (Counsel of Record)
Associate General Counsel
139 E. Fourth Street, 1303-Main
P.O. Box 961
Cincinnati, Ohio 45201-0960
(513) 287-4359 (telephone)
(513) 287-4385 (facsimile)
Amy.Spiller@duke-energy.com (e-mail)
Jeanne.Kingery@duke-energy.com (e-mail)

VERIFICATION

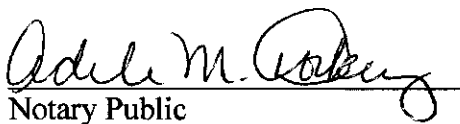
STATE OF OHIO)
)
COUNTY OF SUMMIT)

Before me, a Notary Public for the State of Ohio, personally appeared Julia S. Janson, who, first having been sworn, deposed and said that she is the President of Duke Energy Ohio, Inc., and that she has read the foregoing Application and that the statements set forth herein are true and accurate to the best of her knowledge and belief.

By: _____
Julia S. Janson, President

Sworn to and subscribed before me, a notary public, in and for said county and state, this 25TH day of January, 2012.

ADELE M. DOCKERY
Notary Public, State of Ohio
My Commission Expires 01-05-2014

_____
Notary Public

PURCHASE AND SALE AGREEMENT

²⁹
3 This **PURCHASE AND SALE AGREEMENT** (this "**Agreement**") is made as of the day of January, 2012 ("**Effective Date**") by and between **DUKE ENERGY OHIO, INC.**, an Ohio corporation with office located at 139 East Fourth Street, Cincinnati, Ohio (the "**Seller**"), and **BUTLER RURAL ELECTRIC**, a Not-for-Profit Corporation with offices located at 3888 Shiloh-Rickett Road, Oxford, OH (the "**Buyer**").

For and in consideration of the premises and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **Sale of Equipment.** Seller owns certain equipment used in the service of the New Biddinger Substation, which is located on New Biddinger Road, Butler County, Ohio. Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, certain electric facilities and equipment, e.g., poles, neutral conductor, down guys and anchors (hereinafter collectively referred to as the "**Equipment**"), more particularly described on the attached Exhibit A, which is incorporated herein by reference). All of the Equipment will be transferred, conveyed, and granted to Buyer pursuant to this Agreement and a Bill of Sale transferring the same to Buyer. The poles to be sold are numbered with Seller's identifiable numbering as follows: 129H-320 through 129H-348.

2. **Purchase Price.** The purchase price (the "**Purchase Price**") for the Equipment shall be **NINETEEN THOUSAND SEVEN HUNDRED TWENTY FIVE U.S. DOLLARS** and 38/100 cents (\$19,725.38), payable in U.S. funds immediately available on the Closing Date, by wire transfer or as otherwise mutually agreeable to the parties hereto. The Purchase Price shall be paid thirty (30) days from the date of Seller's invoice.

3. **Closing Date; Seller Approvals.** The Closing shall take place within ninety (90) days of the Effective Date (if PUCO approval is not required, the Closing will be upon a time mutually agreeable to the parties) at a time, place, and manner mutually agreeable to the parties hereto (the "**Closing Date**"). Seller's obligations hereunder are contingent upon Seller receiving the appropriate internal approvals and any requisite PUCO after the Parties execute this Agreement and prior to Closing. Should Seller fail to receive any approvals to close this sale and complete this contemplated transaction hereunder, Seller has the right to terminate this Agreement upon notification to the Buyer that it is terminating this Agreement and any accompanying agreements, and neither party shall have any further liability to the other party hereunder.

4. **Acceptance/Delivery.** Upon payment by Buyer of the Purchase Price and upon delivery to Buyer of a Bill of Sale: (i) Seller shall be deemed to have delivered the Equipment to Buyer, (ii) Buyer shall be deemed to have taken delivery of and accepted the Equipment from Seller and (iii) all right, title, and ownership of the Equipment shall be transferred to the Buyer.

5. **Condition of Equipment.** EXCEPT FOR THE REPRESENTATIONS AND WARRANTIES OF SELLER AS TO TITLE SET FORTH IN THIS AGREEMENT, THE

EQUIPMENT IS SOLD TO THE BUYER "AS-IS, WHERE IS," WITHOUT ANY REPRESENTATIONS AND WARRANTIES WHATSOEVER, WHETHER STATUTORY, EXPRESS, OR IMPLIED INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR AS TO THE CONDITION OR QUALITY OF THE EQUIPMENT. SELLER SHALL NOT BE LIABLE, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE RELATING TO THE SERVICES OR THIS AGREEMENT, FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL LOSS OR DAMAGE, ANY DAMAGE TO OR LOSS OF ANY PROPERTY OR EQUIPMENT, OR ANY LOSS OF USE OF PROPERTY OR EQUIPMENT.

6. **Remarketing of the Equipment:** Buyer shall, as soon as practical after the transfer of the Equipment to Buyer and at Buyer's sole cost, remove any Seller identifying marks from the Equipment and re-stencil the Equipment with Buyer's identifying marks and applicable tags, if applicable.

7. **Use of Corporate Name.** Buyer shall not use the name Duke Energy Ohio, Inc., or Duke Energy in any manner subsequent to the Closing.

8. **Representations and Warranties of Seller.** Seller hereby represents, warrants, and declares to and in favor of Buyer as follows:

(a) Seller is a corporation duly organized, existing and in good standing under the laws of the State of Ohio, and all requisite PUCO approvals will be requested by Seller subsequent to the Parties' execution hereof.

(b) Seller is the lawful and rightful owner of the Equipment and has the right and good title to sell the same to Buyer.

(c) This Agreement constitutes the legal, valid, and binding obligation of Seller, enforceable in accordance with its terms.

(d) There are no liens, encumbrances, or third party interests in the Equipment.

9. **Representations and Warranties of Buyer.** Buyer hereby represents, warrants, and declares to and in favor of Seller that as follows:

(a) Buyer is a not-for-profit corporation duly organized, existing, and in good standing under the laws of the State of Ohio. The execution, delivery, and performance of this Agreement by Buyer have been duly and validly authorized and approved by all requisite action.

(b) This Agreement constitutes the legal, valid, and binding obligation of Buyer, enforceable in accordance with its terms.

(c) There is no contract or agreement to which Buyer is a party that would prohibit Buyer from fulfilling its obligations hereto.

(d) Buyer has obtained or will obtain prior to the Closing any and all requisite approvals, consents, permits, etc. needed to consummate the transfer of the Equipment from Seller to Buyer herein.

10. **No Finder.** Each party represents and warrants to the other that neither it nor any party acting on its behalf has paid, or become obligated to pay, or committed any other party to pay any fee or commission to any broker, finder, or intermediary for or on account of the transactions contemplated by this Agreement.

11. **Hold Harmless by Buyer.** Buyer agrees to hold Seller, its agents, employees, officers, directors, shareholders, representatives, parent and other affiliates harmless from and against any loss, liability, claim, cost, damage or expense (including reasonable attorneys' fees) arising out of or in connection with any damage to property accident, injury or loss of life or any claim or legal proceedings with respect to the Equipment, to the extent arising or relating to any period after the Closing Date, including, without limitation, such claims arising under or relating to the operation thereof. *Buyer's responsibilities and obligations in this Paragraph 11 are solely and expressly to the extent permissible by applicable law.*

12. **Taxes.** All taxes and transfer, excise, filing, or documentation fees or similar charges associated with the sale of the Equipment hereunder shall be the responsibility of the Buyer.

13. **Further Assurances.** At the reasonable request of Buyer, Seller shall make, do and execute or cause to be made, done and executed all such further acts, deeds, and assurances as Buyer or Buyer's counsel may, at any time or from time to time, reasonably request to more effectively convey the Equipment to Buyer and effectuate this Agreement.

14. **Survival of Representations and Warranties.** The representations and warranties herein contained on the part of the Seller and Buyer shall survive the execution of this Agreement by the parties for one year hereto and shall be deemed made as of the Closing Date.

15. **Successors and Assigns.** This Agreement shall inure to the benefit of Buyer and Seller and be binding upon the parties hereto, and their respective successors and assigns.

16. **Severability.** Any term, condition, or provision of this Agreement which is, or is deemed to be, void, prohibited, or unenforceable in any jurisdiction is, as to such jurisdiction, severable herefrom, and is ineffective to the extent of such avoidance, prohibition, and unenforceability without in any way invalidating the remaining terms, conditions, and provisions hereof. Any such avoidance, prohibition, and unenforceability in any jurisdiction does not invalidate or render unenforceable such term, condition or provision in any other jurisdiction.

17. **Waiver.** No waiver by either party hereto of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

18. **Modifications.** This Agreement shall not be altered, amended, changed, waived, terminated, or modified in any respect or particular unless the same shall be in writing and signed by or on behalf of the party to be charged therewith.

18. **Entire Agreement.** This Agreement expresses the entire understanding and agreement between the parties hereto pertaining to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements, or agreements between the parties on such subject matter. Each party acknowledges and agrees that no employee, officer, agent, or representative of the other party has the authority to make any representations, statements, or promises in addition to or in any way different than those contained in this Agreement, other than in writing signed by both parties, and that it is not entering into this Agreement or transaction in reliance upon any representation, statement, or promise of the other party except as expressly stated herein. This Agreement contains the entire agreement and understanding between the parties hereto with respect to the subject matter contained herein and supersedes all prior agreements, understanding, and representations, oral or written. No modification, limitation, or agreement to that effect in writing and signed by parties hereto.

19. **Governing Law.** This Agreement, the construction of this Agreement, all rights and obligations between the parties to this Agreement, and any and all claims arising out of or relating to the subject matter of this Agreement (including all tort claims), shall be governed by the laws of the State Of Ohio. If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected, but shall continue to be valid and enforceable to the fullest extent permitted by law.

20. **Termination.** This Agreement may be terminated at any time prior to the Closing Date by mutual written consent of Seller and Buyer.

21. **Counterparts: Facsimile Execution.** This Agreement may be executed in one or more counterparts, all of which will be considered one and the same agreement and will become effective when one or more counterparts have been signed by each of the parties and delivered to each other party, it being understood that the parties need not sign the same counterpart. Further, this Agreement may be executed by facsimile signature(s).

22. **Consequential Damages.** IN NO INSTANCE WILL EITHER SELLER OR BUYER BE LIABLE TO THE OTHER PARTY HEREIN FOR ANY EXEMPLARY, PUNITIVE, SPECIAL, INDIRECT, CONSEQUENTIAL, REMOTE, OR SPECULATIVE DAMAGES (INCLUDING, WITHOUT LIMITATIONS, ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES) RESULTING FROM OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.

23. **Headings.** Any titles, captions, and headings contained in this Agreement are for convenience only and shall not be deemed a part of this Agreement.

24. **Further Cooperation.** Seller and Buyer agree that at any time, or from time to time, on or before and after the Closing date, they will, on request of the other, execute and deliver such further documents and do such further acts and things as such other party may reasonably request in order fully to effectuate the purposes of this Agreement.

25. **Notice.** Any written notification required hereunder shall be accomplished if given in person to the other party or at the time it is mailed to the other party at the address stated herein by certified mail-return receipt requested.

[Signatures on following page]

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Seller and Buyer have executed this Agreement as of the Effective Date hereinabove set forth.

SELLER:

DUKE ENERGY OHIO, INC.

By: Tom Patten
Name: Tom Patten
Title: Supervisor - Distribution Design

BUYER:

BUTLER RURAL ELECTRIC

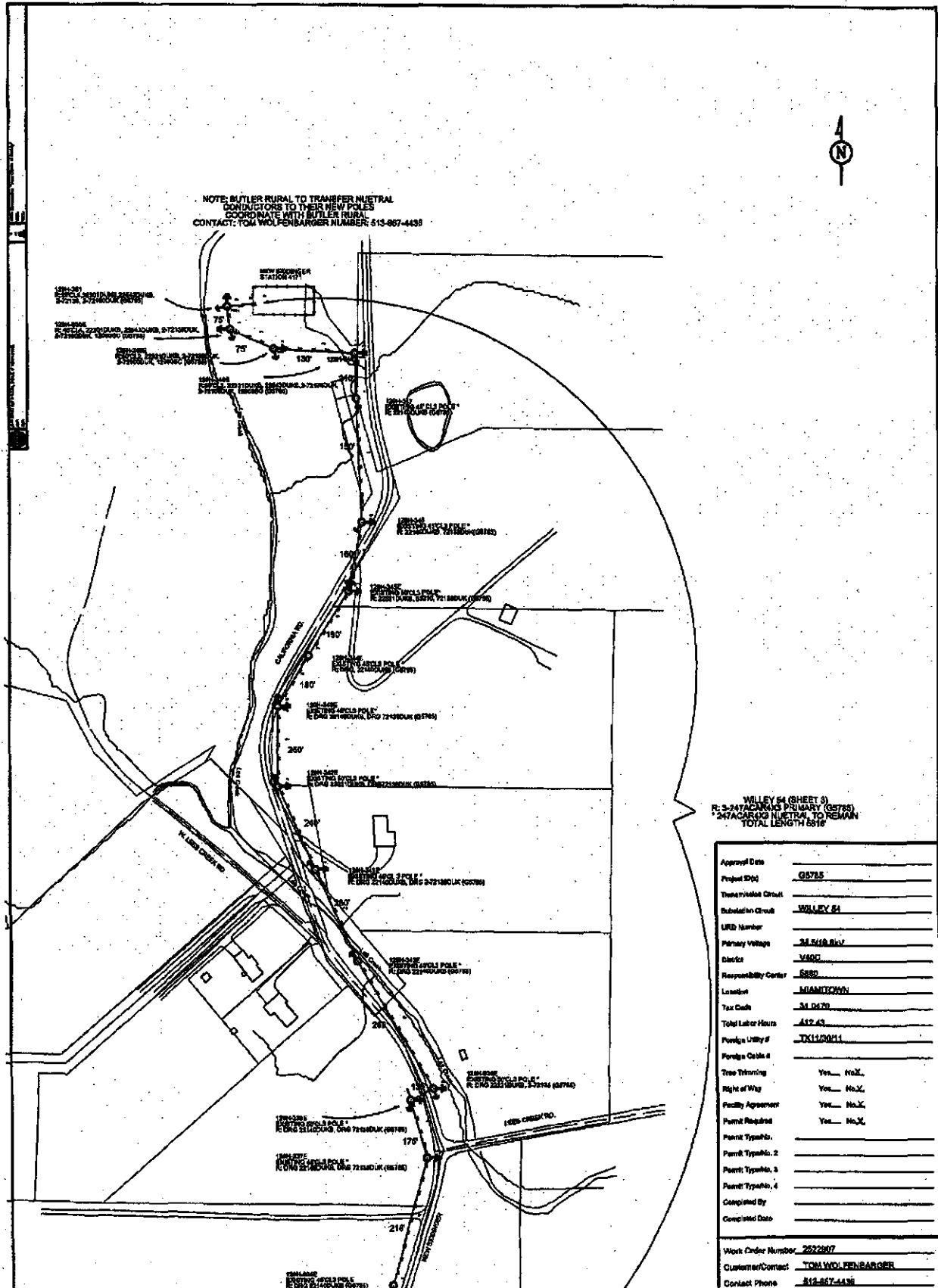
By: Michael L. Sims
Name: MICHAEL L. SIMS
Title: GENERAL MANAGER

EXHIBIT A

EXHIBIT A

Item	Item Description	Quantity
103463	WIRE/CABLE,ELECTRICAL,BARE:PENGUIN,6/1 STR,4/0 AWG,ACSR,0.927" DIA OVER ARMOR ROD,RH	1669.24
50123125	POLE,POWER,UTILITY,40' LG,CCA FINISH,RND TAPERED,SOUTHERN YELLOW PINE CLASS 4,0.6 PCF	1
50123128	POLE,POWER,UTILITY,45' LG,CCA FINISH,RND TAPERED, SOUTHERN YELLOW PINE CLASS 4, 0.6 PCF	19
50123129	POLE,POWER,UTILITY, 50' LG, CCA FINISH, RND TAPERED, SOUTHERN YELLOW PINE CLASS 2, 0.6 PCF	8
70024	ANCHOR,EARTH:SCREW SINGLE HELIX,SMALL HUB, 14" DIA, 1" DIA ROD,22000 LB,8000 FT LB HOLDING CAPACITY,HIGH STRENGTH CS,2-1/8" x 2-1/8"	22
933185	CLEVIS,INSULATOR:SECONDARY,GAL V STL,3" X 3-1/4",4" -4/14" EXTENSION	28

EXHIBIT B



BILL OF SALE
Butler Rural Electric
New Biddinger Substation

Pursuant to the Order of the Public Utility Commission of Ohio ("PUCO") in Cause No. _____ dated _____, [the preceding language is only applicable if PUCO approval is required for this transaction] and for and in consideration of the sum of NINETEEN THOUSAND SEVEN HUNDRED TWENTY FIVE U.S. DOLLARS AND THIRTY EIGHT CENTS (\$19,725.38), and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, **DUKE ENERGY OHIO, INC.**, an Ohio corporation and ("Seller"), hereby sells, assigns, transfers, conveys, sets over, and delivers to the **BUTLER RURAL ELECTRIC**, a(n) ~~not-for-profit corporation~~ ("Buyer"), all of Seller's right, title, and interest in and to Seller's Equipment, which is described in the attached "Exhibit A" (the "Equipment") and is located as set forth on the attached drawing, which is incorporated herein in Exhibit B. The Equipment is located within the public road right-of-way of New Biddinger Road in the County of Butler, State of Ohio.

As a result of such sale, it is understood by Buyer that, from the Effective Date hereof, Buyer shall assume the responsibility for the operation and maintenance, taxes, depreciation, environmental compliance, replacement parts, insurance, and the risk of loss or damage to the Equipment, and all other liabilities arising from the ownership and/or operation thereof; and shall indemnify and hold Seller harmless from all claims, damages and expenses arising therefrom.

Seller covenants that it is the owner of the Equipment, has good title thereto and has lawful authority to convey the same to Buyer for the consideration set forth above.

THE EQUIPMENT IS TRANSFERRED "AS IS." EXCEPT AS EXPRESSLY STATED HEREIN, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED (INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE).

Buyer and Seller agree to execute and deliver any and all such further documents and instruments and to take any and all such further action as may be reasonably required, if any, to carry out the intent and purposes of this Bill of Sale.

This Bill of Sale shall be governed by and construed in accordance with the laws of the State of Ohio, without regard to principles of conflicts of law.

This Bill of Sale may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[Signature pages follow.]

IN WITNESS WHEREOF, Seller and Buyer have caused this Bill of Sale to be executed by their respective duly authorized representatives, with an Effective Date as of the last date set forth below.

DUKE ENERGY OHIO, INC.

By Tom Patton

Printed Name: Tom Patton

Printed Title: Supervisor

Date: 1-3-12

BUTLER RURAL ELECTRIC

By Michael L. Sims

Printed Name: MICHAEL L. SIMS

Printed Title: GENERAL MANAGER

Date: DECEMBER 9, 2011

STATE OF OHIO)

COUNTY OF HAMILTON) SS:

Personally appeared before me this day, TOM PATTON,
a duly authorized representative of Duke Energy Ohio, Inc. and
acknowledged the signing of this Bill of Sale by HIM to be a voluntary act and deed
for and on behalf of Duke Energy Ohio, Inc., and having been duly sworn/affirmed,
states that any representations contained therein are true to the best of HIS personal
knowledge.

WITNESS my hand and notarial seal, this 3RD day of JANUARY, 20 12

My Commission Expires: 02/16/2014

Signed Name:

Maryanne E. McGowan

My County of Residence: HAMILTON

Printed Name:

MARYANNE E. McGOWAN

MARYANNE E. MCGOWAN
Notary Public, State of Ohio
My Commission Expires 02-16-2014

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

STATE OF OHIO)
) SS:
COUNTY OF Butler)

Personally appeared before me this day, Michael R. Sims, a duly authorized representative of the **Butler Rural Electric** and acknowledged the signing of this Bill of Sale by him to be a voluntary act and deed for and on behalf of the **Butler Rural Electric**, and having been duly sworn/affirmed, states that any representations contained therein are true to the best of his personal knowledge.

WITNESS my hand and notarial seal, this 9th day of December, 2011.

My Commission Expires: May 30, 2015 Signed Name: Melissa J Moore
My County of Residence: Pike Printed Name: MELISSA J MOORE



This Instrument Prepared by:
Janice L. Walker, Esq.
Attorney-at-Law
Attorney for Duke Energy Ohio, Inc.
139 East 4th Street
Cincinnati, OH 45202
(513) 421-9500

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Janice L. Walker

EXHIBIT A

Equipment

(CPI)	Material Description	Quantity
103463	WIRE/CABLE,ELECTRICAL,BARE:PENGUIN,6/1 STR,4/0 AWG,ACSR,0.927" DIA OVER ARMOR ROD,RH	1669.24
50123125	POLE,POWER:UTILITY,40'LG,CCA FINISH,RND TAPERED,SOUTHERN YELLOW PINE CLASS 4,0.6 PCF	1
50123128	POLE,POWER,UTILITY,45' LG,CCA FINISH,RND TAPERED, SOUTHERN YELLOW PINE CLASS 4, 0.6 PCF	19
50123129	POLE,POWER,UTILITY, 50' LG, CCA FINISH, RND TAPERED, SOUTHERN YELLOW PINE CLASS 2, 0.6 PCF	8
70024	ANCHOR,EARTH:SCREW SINGLE HELIX,SMALL HUB, 14" DIA, 1" DIA ROD,22000 LB,8000 FT LB HOLDING CAPACITY,HIGH STRENGTH CS,2-1/8" x 2-1/8"	22
933185	CLEVIS,INSULATOR:SECONDARY,GALV STL,3" X 3-1/4",4"-4/14" EXTENSION	28

EXHIBIT B

Location of **Equipment**

