

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

**In the Matter of the Application of Ohio )  
Power to Amend Its Supplier Coordination )  
Tariff and Related Contracts. )**

**Case No. 13-729-EL-ATA**

**Initial Comments of the  
Retail Energy Supply Association**

**Date: July 8, 2013**

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## **Introduction**

The Retail Energy Supply Association (“RESA”)<sup>1</sup> is a broad and diverse group of retail energy suppliers who share the common vision that competitive retail energy markets deliver a more efficient, customer-oriented outcome than a regulated utility structure. In March 2013, Ohio Power Company (“OPC”) proposed changes to its Supplier Tariff, PUCO No. 20, and introduced a standardized Competitive Retail Energy Service (“CRES”) agreement for use in both Ohio Power and Columbus Southern service districts of OPC. RESA filed and requested a comment period, which was granted in an Entry issued June 5, 2013, by the Public Utilities Commission of Ohio (“Commission”). RESA is pleased to provide these initial comments in order to assist the Commission as it considers OPC’s proposals.

## **Overall Opinions**

OPC stated that, among other things, its proposed changes will provide greater clarity and consistency, and incorporate best practices from other Ohio utilities.<sup>2</sup> RESA concurs with OPC that the Supplier Tariff and the CRES Agreement should be clear and the pricing should be transparent. But the goal of the Supplier Tariff, however, needs to be much broader than reflecting what a utility considers the best practices of other utilities. The criteria by which the Commission must judge the Supplier Tariff and the CRES Agreement is the State Energy Policy as codified in Section 4928.02, Revised Code. Simply put, the Supplier Tariff must assure reliable service,<sup>3</sup> expand the availability of supplies and suppliers from the market to residential

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<sup>1</sup>RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Hess Corporation; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

<sup>2</sup> Application at Exhibit C-3.

<sup>3</sup> Section 4928.02(A), Ohio Revised Code.

customers,<sup>4</sup> prohibit subsidies between regulated and competitive services,<sup>5</sup> and assist in the development of an open market.<sup>6</sup>

To achieve these statutory criteria, the current Supplier Tariff amendments as proposed by OPC must be modified primarily to address five issues.

**1. The unauthorized OPC capacity agreement must be rejected**

The unauthorized capacity agreement requested now by OPC must be rejected. CRES Providers who signed that agreement must be released from that contract of adhesion. A copy of the contract that OPC is demanding be signed is attached as Exhibit A. That contract has not been approved by the Commission, nor would it be as several of its terms and conditions are unjust and unreasonable. For example, the OPC-proposed capacity contract omits any reference to Commission oversight and refers to federal authorities.<sup>7</sup> Further, once in court, the proposed capacity agreement provides OPC with a cognovits note which would permit OPC to obtain a judgment against the CRES Provider without the CRES Provider being present.<sup>8</sup> The contract also provides for not only financial assurance, such as a bond or guarantee from the CRES Provider, but also a security interest in the CRES Provider's receivables from its sales in the OPC service area.<sup>9</sup> Such a security interest would directly interfere with the CRES Provider's financing the procurement or production of the power it has for sale. A CRES Provider must buy or produce the power before it can be sold. Thus, the CRES Provider must have flexibility to finance its inventory or generation assets by being able to pledge its receivables from the sale of the power. This is particularly true for smaller CRES Providers. A CRES Provider cannot both

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<sup>4</sup> Section 4928.02(C), Ohio Revised Code.

<sup>5</sup> Section 4928.02(H), Ohio Revised Code.

<sup>6</sup> Section 4928.02(G) and (I), Ohio Revised Code.

<sup>7</sup> Exhibit A at 8, ¶6.2, and 11, ¶7.5.

<sup>8</sup> *Id.* at 23.

<sup>9</sup> *Id.* at 7, ¶5.3.

pledge its receivables to finance its operations and pledge the same receivables for, in essence, double coverage to OPC.

To OPC's credit, it has not taken any action against CRES Providers who have refused to sign its capacity agreement while this matter is being discussed and litigated in good faith by RESA and other CRES Providers. Similarly, RESA has investigated OPC's claim that PJM Interconnection ("PJM"), which collects the capacity payments for OPC from CRES Providers, is not required to engage in collection activities if the CRES Provider does not pay. Thus, OPC may need additional documentation as to privity of contract between the CRES Provider and OPC for OPC to enforce collections from non-capacity paying CRES Providers. To that end, RESA proposes an amendment to the Supplier Agreement that addresses the privity issue, but without the highly objectionable provisions described above. Further, in keeping with the goal of clarity, RESA believes that all the duties and obligations between the CRES Providers and OPC should be in a single Supplier Service Agreement, not two contracts as OPC is requesting. CRES Provider Thus, RESA proposes the capacity provision set forth in Exhibit B to these comments in order to meet OPC's legitimate concerns, while also satisfying the requirements of Section 4928.02, Revised Code.

**2. The amount of additional financial security requested by OPC must be denied**

The second major issue is the amount of additional financial assurance OPC has requested a CRES Provider post related to the capacity agreement. It should be noted that nowhere in the current Supplier Tariff, the proposed Supplier Tariff or in the Supplier Agreement is there a clear, transparent, and uniform formula for determining how much credit a CRES Provider must supply. The amount of credit will vary from time to time as a CRES Provider's load increases or decreases, but the formula should not vary. There appears to be

some agreement between the supplier community and OPC on what the financial assurance should cover. OPC is entitled to financial assurance equal to its exposure from the day PJM sends a defaulting CRES Provider's retail customer back to OPC until the day that customer is put on standard service minus a reasonable amount of unsecured credit<sup>10</sup>.

It is not clear how long that period is likely to be or what the financial risk is to OPC during that time period. On July 2, 2013 the Commission authorized OPC to send customers from a defaulting CRES Provider back to OPC's standard service in 15 days instead of 30 days.<sup>11</sup> The reduction in the amount of time it takes to return a customer to standard service lowers OPC's risk and the amount of financial security needed to cover that risk by more than two weeks. Also unclear is how to account for the time component to consider when calculating OPC's exposure is the time between when PJM bills the CRES Provider for capacity and when PJM collects from the CRES Provider. Currently, OPC has PJM bill the capacity monthly. Duke, the other FRR<sup>12</sup> supplier in Ohio, has PJM bill for capacity weekly. One of the reasons for the monthly billing for OPC capacity was that, at the time the billing was set up following the December 2012 Opinion and Order in the Case No. 11-346-EL-SSO, OPC's capacity was collected using a two-tier method of calculating the capacity charge, instead of the uniform collection of RPM<sup>13</sup>. While it may have required a month for tiered capacity charges to be determined and applied by PJM, since that is no longer the case as OPC only charges RPM, that could be done weekly just as it is for Duke, further reducing OPC's exposure. Finally, there is the time to read the meter. For large customers or customers with interval meters, the new

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<sup>10</sup> On the subject of unsecured credit, RESA believes that it should be extended to private as well as publically traded companies. That is addressed in issue three.

<sup>11</sup> *In the Matter of the Ohio Power Company's Request for Authorization to Suspend its Service Agreement with FirstEnergy Solutions Corp.*, Case No. 13-1427-EL-UNC, Entry (July 2, 2013).

<sup>12</sup> "FRR" refers to Fixed Resource Requirement.

<sup>13</sup> "RPM" refers to Reliability Pricing Model.

standard service account can begin without waiting for meter readers to go out and document the amount of default power supplied. The same may not be true of residential customers. In sum, rather than OPC's proposed 90 days,<sup>14</sup> the exposure of OPC may be reduced to 22 days plus the time to read the meters.

While there may be agreement that OPC should be covered for the financial exposure of the time between a CRES Provider's default and the retail customer's return to standard service, that amount of time and the steps necessary to optimize the amount of time requires more facts than are available today. Thus, RESA proposes a one-day workshop to see if an agreement can be reached by OPC, the interveners, and Staff as to the amount of time necessary to adequately cover OPC's credit risk. If the one-day workshop fails to produce a consensus, then there should be an evidentiary hearing to establish a record by which the Commission can determine the correct formula for the financial assurance.

**3. All financial assurance required by CRES Providers should be in the Supplier Tariff**

When determining the amount of financial assurance a CRES Provider must post with OPC, OPC wisely follows the industry practice and provides an amount of unsecured credit based on the senior debt credit rating of the CRES Provider or its parent. RESA supports this practice, but believes it should be in the Supplier Tariff so prospective CRES Providers determining whether to come to the OPC service area, or existing CRES Providers who seek to expand their operation, can determine and verify the amount of financial assurance that must be posted. In addition, under the current program, no unsecured credit is offered to non-public companies. There are several private companies operating in Ohio today, including a few RESA members, who have balance sheets worthy of unsecured credit. PJM has faced a similar issue as

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<sup>14</sup> Exhibit A at 5, ¶5.1.

to the bond posted with it. PJM implemented tariff provisions that provide a method for private companies with strong balance sheets to obtain unsecured credit. RESA proposes that OPC adopt a similar policy.

**4. OPC must confirm CRES Providers' sales data before submitting to PJM**

The fourth general issue RESA takes issue with is also addressed by OPC in its new Supplier Tariff provisions – see Sheet 103-52D and -53D below. The issue is inaccuracies with the PJM usage reports and the subsequent rebilling and settlement at PJM. Simply put, the amount of sales that OPC reports to PJM for each CRES Provider is occasionally incorrect. Since PJM either requires the CRES Provider to pay for under-deliveries or PJM pays the CRES Provider for over-deliveries of power when compared to the consumption figures provided by OPC, millions of dollars are at stake if the consumption figure provided by OPC is incorrect. Further, corrections require rebilling at PJM and ultimately of the retail customer. Time is of the essence in the case of the later as it may be impossible to collect from or credit a customer if the service agreement between the CRES Provider and the retail customer has ended. RESA has one suggestion to address this issue: OPC should send a notice to the CRES Provider prior to sending the consumption figure to PJM, stating the total amount OPC is reporting for the CRES Provider. Currently, there is an EDI transmission of sales on an account-by-account basis. Sending the sum, though, would allow the CRES Provider to verify at least the order of magnitude of the number. It would also permit a timely correction request within the 60 days permitted by PJM.

**5. Double billing for customers on budget bills must be corrected**

Fifth and finally, RESA asks that OPC address budget billing. There has been a problem with customers who are on budget billing and who then switch to shopping. Often on the

crossover month, the customer gets the energy bill from the CRES Provider and the budget bill with the energy component. In other words, for their first month with a CRES Provider, the customer is billed twice for energy. That second energy payment to OPC is subsequently corrected when the budget is eventually trued up. In the interim, though, the retail customer not only did not receive the savings they anticipated, but may have an unexpected cash-flow problem paying in essence two power bills. This error is a significant barrier in the competitive retail marketplace as it could potentially dissuade an entire subset of customers, who ultimately are savvy and want to shop, from choosing a CRES Provider. A process has to be worked out to prevent the double-billing for energy on the crossover to shopping by budget bill standard service customers. OPC's tariff should be amended to require the company to adjust a budget bill customer's bill in time for the customer's first CRES bill. Further, if a retail customer has standard service, it can arrange for a single budget bill for both energy and wire service. If the customer elects to shop, it can only arrange for an energy budget with the CRES Provider and a separate wire service budget with OPC, but not a single budget. True budget billing is a convenience that many retail customers would like, and should have.

In addition to the five substantive issues described above, there are numerous issues in the tariff proposals that OPC has filed. Unlike, the five items above, the following are other concerns that RESA has with OPC's proposed changes to the current Supplier Tariff in this proceeding. For clarity, these changes are presented in the order in which they appear the tariff.

### **The Proposed Supplier Tariff**

#### **1. Sheet No. 103-29D, Section 3 "Customer Choice of Competitive Service Provider"**

This proposed provision includes the following change (in redlined format):

Any customer who desires service from a [Competitive Service Provider ("CSP")] must first contract with a CRES Provider who will arrange for

the provision of such services. The CRES Provider shall then notify the Company at least twelve (12) calendar days prior to the customer's regularly scheduled meter reading date after which the customer will receive services from the SCP. All changes in CRES Provider shall occur at the end of the customer's ~~regularly-scheduled~~ actual meter reading or bill date. Any request to change a customer's CRES Provider received after twelve (12) calendar days prior to the customer's regularly scheduled meter reading date shall become effective the subsequent billing month.

This proposed change is problematic for CRES Providers. The only information available to CRES Providers from OPC is the date when the meter is regularly scheduled to be read. Thus, CRES Providers have no knowledge of when the customer's meter is *actually* read by OPC, and will not then know when to ensure that the switch in service provider takes place appropriately. Also, this new proposal will allow OPC the opportunity to interject an inconsistent approach to customer switches. For instance, two customers on the same billing cycle could be switched at different times – on its bill date and the other on its actual meter reading date. This inconsistent approach to customer switches adds uncertainty to the process, as well as the potential for confusion. Finally, because CRES Providers must submit a switch 12 days prior to the scheduled meter read date, the proposed change leaves open the opportunity for the utility to reject enrollments based on when the actual meter reading takes place - a date that is unknown to the CRES Provider. Since the actual meter read date is not known until after the fact, if the meter is read earlier, it could actually shorten the timing of CRES Provider enrollment requiring OPC to push enrollment to the following month. OPC's tariff does not address these nuances and adds uncertainty to a process which has worked for years. OPC's proposal should be rejected.

**2. Sheet No. 103-30D, Section 3 “Customer Choice of Competitive Service Provider”**

In Section 3 (on Sheet No. 103-30D), OPC's proposed Supplier Tariff reflects that there is a \$10 fee for switching to a CRES Provider. That fee is the incorrect fee. On January 30,

2013, the Commission ordered that the switching fee be reduced to \$5.00.<sup>15</sup> Although the Commission’s decision is on appeal,<sup>16</sup> there has been no stay or other delay ordered in its implementation. Therefore, the switching fee level must be corrected.

**3. Sheet No. 103-31D, Section 5 “Minimum Stay Requirements”**

OPC does not propose any changes at this time. As written, medium and large commercial and industrial customers who return to OPC’s SSO must remain with OPC for 12 months. Residential and small commercial customers returning to SSO service must stay on SSO service through April 15 of the following year if the customer received SSO service at any time during the previous May 16 through September 15 time period. The language also reflects that, after December 31, 2014, the minimum stay requirements will not apply.

On January 30, 2013, the Commission found that OPC’s minimum stay provision (the same one that OPC does not propose to change here) was “inconsistent with our state policy objectives contained within Section 4928.02, Revised Code, as well as recent Commission precedent.”<sup>17</sup> The Commission specifically ruled that the minimum stay provision should be eliminated earlier than OPC had proposed (which was by January 1, 2015). The Commission ordered OPC to file tariff revisions that indicate the elimination of the minimum stay by January 1, 2014. OPC’s filing the instant proceeding does not conform to the Commission’s order.

The existing Minimum Stay limitations deter customers from shopping and are inconsistent with other EDU service territories. Thus, the Supplier Tariff should make clear that

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<sup>15</sup> *In the Matter of the Application of Columbus Southern Power Company and Ohio Power Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 11-346-EL-SSO et al., Entry on Rehearing at 43 (January 30, 2013).

<sup>16</sup> *The Kroger Co. et al. v. Pub. Util. Comm. of Ohio*, Sup. Ct. Case No. 13-0521.

<sup>17</sup> *Columbus Southern, supra*, Entry on Rehearing at 42-43 (January 30, 2013).

on January 1, 2014, any customer subject to a minimum stay is free to shop consistent with the Commission's previous ruling.<sup>18</sup>

**4. Sheet No. 103-31D, Section 6 "General Provisions for Competitive Service Providers"**

OPC adds the following sentence at the end: "In the event the CRES Provider fails to supply sufficient energy to serve its customers, the CRES Provider shall be responsible for payment for such energy as provided in Section 7b of these Supplier Terms and Conditions of Service." RESA has no objection to this newly proposed language.

**5. Sheet No. 103-32D, Section 7a "Transmission Service"**

OPC added "Failure to obtain sufficient transmission service and ancillary services will result in a suspension of the CRES Provider's registration and resumption of such services by the CRES Provider occurs." RESA has no objection to this new language.

**6. Sheet No. 103-32D to 103-33D, Section 7b "RTO settlements"**

Here, OPC proposes an entirely new provision that addresses billing for settlements, use of meter data collected by the Company (including data from monthly metered customers, interval metered customers), calculation of load, calculation of capacity obligation, and derating of load. Additionally, OPC's language addresses aggregation of the monthly metered customer's actual usage and the hourly metered customers' actual usage, the unaccounted for energy determination, and the adjustment for any arithmetic errors due to PJM's monthly bills to the Company and the CRES Provider.

Before turning to the specific language, RESA recommends that additional consideration be given to implementing a dispute resolution process or a generic "good faith coordination" requirement that gives both OPC and the CRES Providers the ability to work out issues related to

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<sup>18</sup> Elimination of the Minimum Stay effective January 1, 2014, should mean that any customer that returned to OPC prior to January 1, 2014, can shop after that date. No customers should be held to any stay after January 1, 2014.

RTO settlement reporting in a timely fashion. RESA believes that such an additional term can be helpful for both sides.

As to the specific language proposed in Section 7b, RESA objects to one aspect on Sheet No. 103-33D, wherein OPC proposes “[o]n a calendar month basis, monthly metered customers’ actual usage and hourly metered Customers’ actual usage shall be aggregated \* \* \* and submitted to the Transmission Provider.” Based on RESA members’ experience, weekly clearing through PJM is preferable because it is more efficient and smooth. It is a best practice that should be implemented by OPC. RESA does not object to the remaining language in Section 7b; however, RESA recommends the following additional requirements in Section 7b:

- OPC shall publish a detailed “settlements reporting manual” that documents how it reports CRES load obligations to PJM for settlement purposes. At a minimum, this manual shall document how Unaccounted For Energy is determined and allocated to CRES Providers, how load obligations are reported for net-metered customers, how loss factors are applied, and how NITS and Capacity PLC values are calculated.<sup>19</sup>
- OPC shall provide, on its supplier support website information, its actual, experienced Unaccounted for Energy values. This information shall be provided on a monthly basis and shall provide the Unaccounted for Energy values for each hour.
- For CRES Providers serving net-metered customers, OPC shall ensure that when reporting load obligations to PJM for settlement purposes, the CRES Provider receives credit for the customer’s actual, net energy consumption, including when actual net consumption is negative as a result of net excess generation.

**7. Sheet No. 103-34D, Section 7c “Reliability Requirements”**

OPC proposes to change the wording to state that a “CRES Provider shall satisfy those applicable reliability requirements issued by the Commission, Transmission Provider, or any other governmental agency or North American Electric Reliability Corporation (NERC) or

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<sup>19</sup> A manual allows the CRES providers to have access to the settlement information, this may reduce disputes that arise over usage allocations reported by OPC to PJM.

regional reliability council or their successor who has authority over the CRES Provider.” RESA has no objection to Section 7c.

**8. Sheet No. 103-35D, Section 9 “CRES Provider Registration with the Company”**

In proposed Sections 9c and 9g, a \$100 annual registration fee payable to the company will be due each year on July 1, and there must also be a signed statement by the officer of the CRES Provider committing to adhere to the Company’s Open Access Distribution Service.

RESA has no objection to proposed Sections 9c and 9g. In fact, proposed Section 9g appears to simply be a formatting change and not a substantive change.

In Section 9h, OPC proposes to perform the Electronic Data Interchange (“EDI”) testing for registration purposes in quarterly flights and, if a particular registration misses one quarter, that CRES Provider will be included in the next available flight. RESA notes that most utilities offer EDI testing on an ongoing basis. Therefore, RESA believes that quarterly flights for EDI testing is not “best practice.” RESA also points out that the waiting period before the next quarter arrives will have a significant chilling effect on that provider’s enrollments. Customers will be lost if EDI testing cannot be timely completed, and a waiting period of up to 90 days is too long a period of time. RESA recommends that the last sentence in Section 9h be revised as follows: “The Company shall ~~perform offer~~ EDI testing ~~in quarterly flights and include the CRES Provider in the next available flight~~ on an ongoing basis and shall use commercially reasonable efforts to ensure that EDI testing is completed within 30 days after a request to initiate testing by a CRES Provider.”

In the latter portion of Section 9, OPC proposes that it be permitted to reject a CRES registration for any of six reasons: (1) the CRES Provider is not creditworthy; (2) the registration is incomplete and has not been completed within 30 calendar days of notification; (3)

the CRES Provider has undisputed outstanding debts to the Company; (4) failure to comply with payment and billing requirements as specified in the tariff; (5) failure to comply with all applicable requirements of the Transmission Provider Open Access Transmission Tariff; and (6) failure to execute an EDU/CRES Provider Agreement and/or has not completed EDI testing. Additionally, OPC proposes that it not be required to provide services to the CRES Provider unless the CRES Provider is current in its payment of all charges, and that CRES Providers be solely responsible for having appropriate contractual or other arrangements with their customers necessary to implement CRES. Moreover, OPC proposes to remove language that entitled OPC and the CRES Providers to address disputes under the Commission's alternative dispute resolution rule (Rule 4901:1-26, Ohio Administrative Code).

RESA questions the need for an annual registration and fee. It seems unlikely a CRES Provider would have so many changes every year it would necessitate a need for an annual registration. That said, if the annual statement along with any changes is all that is needed, then RESA can agree, rather than requiring CRES Providers to completely re-register every year. However, this is not clear from OPC's filing. In addition, similar to the gas Choice programs in Ohio, there must be a cure period before a registration can be rejected and RESA believes that the Supplier Tariff should reflect that it does not alter the right of OPC and CRES Providers to appeal to the Commission if there is a dispute over registration. Such additional language can be appropriately included at the end of proposed Section 9.

**9. Sheet No. 103-37D, Section 10 "CRES Provider Credit Requirements"**

OPC proposes to define the terms "letter of credit," "Moody's" and "SNP." Plus, in newly proposed Sections 10a and 10b, all CRES Providers will be required to complete the CRES Provider Registration Application and the Company may limit the amount of unsecured credit to be granted to a CRES Provider if OPC "reasonably determines that such limitation is

necessary to protect the Company from an unacceptable level of risk.” With regard to determining creditworthiness, OPC proposes that a CRES Provider may choose from among several credit arrangements, which include a guarantee of payment from a guarantor who meets certain debt rating requirements, a cash deposit, or a surety bond. Additionally, OPC has proposed language addressing: (1) initial credit calculation and (2) ongoing credit calculation.

RESA has no objections to these new definitions, or 10a, or 10b. However, with regard to the initial credit calculation in 10.b.1, OPC proposes the following:

Initially, the Company will calculate the amount of the CRES Provider’s collateral requirement by multiplying thirty days for CRES Provider’s maximum anticipated peak summer energy usage times the price set at the next July forward index price, as established by a generally accepted industry price index for whole sale power delivered to the Company’s load zones within the RTO and subtracting there from the amount of the CRES Provider’s allowed unsecured credit limit. The initial collateral requirement shall be compared against actual usage and the greater of the estimate or actual usage shall be applied until twelve months history is established. The collateral requirement shall be rounded up to the nearest integral multiple of \$1,000.

RESA believes that the 30-day timeframe should be changed to 15 calendar days in accordance with the Commission July 2, 2013 decision.

In proposed Section 10d, OPC addresses the situation where credit is re-evaluated.

Among other things, the proposed paragraph includes the following:

\* \* \* Any subsequent review or re-evaluation of a CRES Provider’s credit worthiness may result in the CRES Provider being required to post collateral not previously requested. The new addition or change in collateral requirement will be necessary to enhance, restore, or maintain the Company credit protection. In the alternative, the Company may limit a CRES Provider’s level of participation or remove the CRES Provider from further participating in the Company’s Choice Program.

RESA believes that any limitation on participation or removal from the Choice Program must be a Commission decision, not a decision from a competitor. Therefore, the last sentence of proposed Section 10d should state: “In the alternative, the Company may **propose to** limit a

CRES Provider's level of participation or **propose to** remove the CRES Provider from further participating in the Company's Choice Program **by filing an appropriate application with the Commission.**" RESA also urges the Commission to not make such an application subject to an automatic approval process because such situations are not "cookie-cutter" cases that can at this time be decided within a particular set of days. The Commission should determine the process at the time of the filing.

In proposed Section 10e, OPC addresses the situation where there is a dispute over the credit calculation. Among other things, OPC proposes the following:

If the parties fail to resolve the dispute by the close of the business on the business day following the notification of the dispute by the CRES Provider, the CRES Provider shall comply with the Company's request for payment. The CRES Provider may appeal the Company's determination of credit requirements to the Commission or seek staff mediation as to any dispute.

Why should CRES Providers have to immediately make full payment if there is a bonafide dispute that is unresolved? If anything, the proposed term creates an incentive for OPC to not resolve credit calculation disputes because it will then be able to receive all of the monies it seeks. This structure is inherently unfair to CRES Providers, and places the concept of dispute resolution upside down. RESA recommends that Section 10e be modified to state: "If the Company and the CRES Provider fail to resolve the dispute, CRES payment shall be made at such time that the matter is resolved by final Commission decision."

**10. Sheet No. 103-42D, Section 11d. "Customer Enrollment Process"**

Ohio Power proposes that government aggregation customer information lists can be provided by compact disc or other electronic medium that the Company deems appropriate. RESA has no objection to this process, as long as it is provided as soon as possible and the fastest method is chosen. In addition, this should be offered until a web-based system is available where CRES Providers can have immediate access to information.

**11. Sheet No. 103-44D, Section 14 “Meter Service Providers (MSPs)”**

Ohio Power proposes that meters be provided and maintained by the Company unless the customer selects a MSP to provide metering services. Also, such meters shall be and remain the property of the Company.” RESA has no objection.

**12. Sheet No. 103-47D , Section 15 “Meter Data Management Agents (MDMAs)”**

This section of the Supplier Tariff currently addresses the application process for agents desiring to provide data management services to customers in OPC’s territory, as well as standards. OPC proposes to add the following language to this section of the Supplier Tariff:

If no entity satisfies the [criteria in Section 15], the Company shall act as the MDMA. As long as the Company is acting as the MDMA, the Company shall read the meters of the CRES Provider’s customers in accordance with the Company’s meter reading cycles, which the Company intends to have posted to its website at <http://www.aepohio.com>. Within three (3) business days of the meter read date, the Company shall electronically transmit the usage information for the CRES Provider’s customers to the CRES Provider.

Here, OPC’s tariff is silent where it should include much more information. CRES Providers rely on data provided by OPC about customers in order to offer customers an accurate price and to service accounts. Currently, a CRES Provider receives customer data from OPC in three forms: (a) the eligibility list (Pre-Enrollment List), (b) EDI transactions, and (c) email from the OPC help desk for updated and missing information. None of these forms provides all the information needed by CRES Providers in order to provide effective service to customers. The Commission has already recognized the serious shortcomings of data access in OPC’s territory. The Commission previously directed OPC to “develop an electronic system to provide CRES Providers access to pertinent customer data, including but not limited to, [Peak Load

Contribution] and [Network Service Peak Load] values, and historical usage and interval data” by May 31, 2014.<sup>20</sup>

However, now is the time to incorporate into OPC’s tariff the important details for data access. This recommendation is completely “in line” with OPC’s stated intention that, in this proposal, it is attempting to be consistent with other Ohio utilities, to seeks to add clarity to its supplier tariff, and it seeks to incorporate best practices. To that end, RESA recommends that OPC expressly include language in the supplier tariff to reflect that it will provide access to data in a single place in the following manners and provide the following data:

(A) Via a web-based system

OPC’s tariff should reflect such a system. Moreover, the tariff should expressly reflect that the system will be a secure, web-based system that will provide electronic access to key customer usage and account data in a standard and generally accepted format that can be accessed and downloaded by CRES Providers that are authorized to access the customer account. More specifically, the tariff should list all of the data elements available through the web-based data access system, including those ordered by the Commission and the following data elements:

- 12 months usage
- 12 months demand
- Loss factor
- Rate class
- Load profile
- Current Capacity PLC
- Current NITS PLC
- Future Capacity PLC, and effective date
- Future NITS PLC, and effective date
- Indicator for customer meter type

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<sup>20</sup> *Columbus Southern, supra*, Opinion and Order at 41 (August 8, 2012).

- Indicator showing if customer is net metered
- Meter read cycle

OPC should be required to conduct a CRES input session in order to identify additional data elements as well. Additionally, OPC should work with CRES Providers to determine the appropriate data delivery mechanisms and appropriate communication channels that should be incorporated into the web-based system. In addition, a web-based tool should be complemented in beta form, which should be established by December 31, 2013, for testing and the web-based system should be released by May 31, 2014, for public use.

(B) Via EDI

OPC's tariff should also expressly reflect that the EDI transactions available. RESA seeks to include in particular that, at the time of customer enrollment, OPC will transmit via EDI to the CRES Provider both the existing effective NITS and Capacity PLC value, in addition to (if available) the future PLC value and the effective date for the future value. This would be transmitted along with the 867 HU request and along with the 814 enrollment acknowledgement. (Here is an example: The PLC values are calculated in November/December, NITS becomes effective January 1, and capacity PLC becomes effective June 1. If a CRES Provider sends in an 867 HU request or an 814 enrollment during February, the CRES Provider would get the currently effective NITS PLC, along with two values for the Capacity PLC (the currently effective value good through May 31 and another value labeled "future PLC" with an effective date of June 1).

(C) In the interim before implementation of the web-based system

The Supplier Tariff should expressly reflect that, in the interim period prior to implementation of a web-based system, OPC should return to providing uniform information to CRES Providers, and that the uniform information shall not differ or contain incomplete information regardless of the method used to deliver the information. The uniform information should include:

- Capacity PLCs along with their effective date
- Transmission NSPLs along with their effective date
- The rate class
- The load profile
- The meter read cycle number
- An indication if the account is on PIPP service for EDI transactions

(D) Sync lists

OPC's Supplier Tariff should expressly reflect that "sync" lists will be provided to CRES Providers, which would allow CRES Providers to compare information in their own systems with information in the utility system to spot and correct any discrepancies before a customer receives the information. This will create consistency across Ohio's service territories, will lower CRES Providers' costs to serve and enroll an account, and will simplify a customer's enrollment.

Additionally, sync lists should assist in the coordination between OPC and CRES Providers.

(E) Annual conversations

Annual meetings or conference calls should be held between OPC and registered CRES Providers to discuss supplier coordination issues affecting CRES Providers.

(F) Smart meter customers

OPC should also provide access to customer usage data for customers with Smart Meters.

**13. Sheet No. 103-49D, Section 17 “Consolidated Billing by the Company”**

OPC added new language in this area to reflect that, upon request, it will offer rate-ready and bill-ready, company-issued consolidated bills to customers upon designation of the rate-ready or bill-ready option. The cost to provide consolidated billing services by the Company to the CRES Provider will be no more than half of the total cost of bill print, insert and postage incurred.

In RESA’s view, implementation of the rate-ready and bill-ready billing options should be implemented as soon as possible. Bill-ready billing allows a supplier to calculate a bill based on different products outside those products contained in the utility’s rate-ready system. Flexibility in the utility billing system will also maximize the potential for new products and lower costs by allowing the CRES Providers to move quickly with changing market options and products for customers. However, OPC’s current bill-ready billing does not function consistently for CRES Providers or their customers. It is simply not working properly.

Additionally, CRES Providers do not have the opportunity to offer their customers budget billing if the customer receives a consolidated bill from OPC.<sup>21</sup> CRES Providers would like to have the option for their customers to select budget billing (on budget) for both the CRES and distribution charges when they receive a consolidated bill from OPC. The budget billing option is desired by many customers and it should be added to the Supplier Tariff. Additionally, RESA recommends that the tariff language reflect a standard review/adjustment process for a

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<sup>21</sup> Budget billing can technically be accomplished via bill-ready billing, but it is not an attractive option. If the CRES provider used bill-ready billing and the customer selected budget billing, the distribution budget will be based on OPC’s methodology, while the energy budget would be based on the CRES provider’s methodology. Then both budgeted amounts would appear on the bill. Simply put, they would be different budgets on a consolidated bill, subject to separate true-ups and adjustments.

budget billing customer . RESA recommends that the review take place once per year, unless the customer switches service and asks for OPC to recalculate the budget bill amount based on the new service rate and historical electric usage.

OPC should be required to invest in a more functional billing system to resolve these problems. Finally, OPC's approach to charging for billing does not include any work papers or costs for CRES Providers to review to ensure they are not overcharged for services. Most utilities have a flat per bill fee which was determined based on costs. To assign a generic standard of no more than half the costs when it is unknown how much of the costs are actually attributed to CRES Providers is unreasonable. If OPC is selling bill insert advertisements for revenue should CRES Providers pay half of the additional postage for those bills? If the customer uses paperless billing is there a different cost for those bills to be issued? These are details which require actual cost estimates to resolve the cost allocation issue.

**14. Sheet No. 103-49D to 103-51D, Section 18 "Metering and Load Profiling"**

OPC's current tariff language reflects that customers with a maximum monthly billing demand of 200 kW or greater during the most recent 12 months shall be interval metered. Now, OPC seeks to add language that requires the customer to also install a dedicated analog phone line. OPC has made no showing that a dedicated phone line, as opposed to a shared phone is required. Since this adds to retail customers' cost, it should not be granted without a compelling reason. Further, it seems odd in this day and age of digital, WiFi and cable internet service that OPC is asking for an analogue phone line.

In sum, OPC proposes to alter the charges, to require that the interval meter and dedicated analog phone line be installed and operational before a CRES Provider may serve the customer, and to supply the load data without liability. The Commission should reject these

requests as erecting barriers to shopping and better energy management by retail customers for which no good reason have been provided.

Interval metering for customers with 200 kW or greater is a policy that exists in other company tariffs,<sup>22</sup> and is a policy with which RESA has agreed.<sup>23</sup> Most of OPC's proposed Section 18 relates to interval metering and RESA does not object to it. However, there are two proposed paragraphs on Sheet No. 103-50D that are problematic, and Smart Meter data should also be addressed.

The first problem relates to OPC's proposal, on Sheet No. 103-50D, to require that the interval meter and dedicated analog phone line be installed and operational before a CRES Provider may serve the customer. RESA strongly disagrees that the interval meter and analog phone line must be installed and operational before any CRES Provider can serve the customer in OPC's territory and it should be rejected for three reasons. First, the installation of the interval meter and phone line are not necessary for CRES; CRES Providers have successfully served many customers without such equipment. Second, with this proposed language, the CRES Providers and customers are at the mercy of OPC's schedule, as well as the schedule of the telecommunications companies, all for equipment that is not necessary for the CRES in the first place. Third, adoption of this proposed language will create a very real opportunity for OPC to thwart CRES customer enrollments in the future. The Commission should not add barriers, or the opportunity for the creation of barriers, in OPC's marketplace.

If RESA's position for this language is not accepted, then there should be an obligation for OPC to process the interval meter installation in an expeditious and timely manner. RESA

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<sup>22</sup> For example, Duke Energy Ohio, Inc. has a 200+ threshold. See, PUCO Electric 19 at Sheet No. 22.8 at page 2.

<sup>23</sup> See, RESA's Initial Brief (at 11-13) filed in *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Electric Security Plan*, Case No. 12-426-EL-SSO.

contends that a specific installation metric be established, and it should be no greater than 60 days.

The second problematic area in Section 18 on Sheet No. 103-50D involves the language stating that OPC, acting as a designated agent for the CRES Provider, will handle and supply hourly load data for the CRES Provider and, at the same time, be held harmless for any actions taken while performing those agent responsibilities. The “held harmless” sentence should be deleted. If OPC errs, omits, acts negligently, or take wrongful intentional action, it should be held responsible. There is no reason to accept that OPC should be absolved for everything that OPC could do while handling a CRES Provider’s customer’s interval meter load data. This language is overreaching and one-sided. Moreover, the Commission should recognize that OPC should be obligated to document its handling of the load data, and to respond in good faith to inquiries from the CRES Providers.

Finally with regard to proposed Section 18, RESA notes that the web-based system that will be implemented<sup>24</sup> should allow for access to Smart Meter data. Just as Smart Meters were not addressed in the data access section of the Supplier Tariff, Smart Meters also were not specifically identified in metering provisions of Section 18. This topic should not be overlooked. OPC proposes the following language on Sheet No. 103-50D, but it is not specific enough:

Data from the monthly-metered end-use customers is collected in subsets corresponding to end-use customer billing cycles, which close on different days of the month. The Company shall convert such meter data, including estimates, for end-use customers to the equivalent hourly usage. Metered usage will be applied to customer segment load curves to derive an estimate for the hour-by-hour usage.

Data from interval-metered end-use customers will also be collected at least monthly by the Company on a billing cycle basis.

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<sup>24</sup> The web-based system was discussed above in section 12.

As explained before, CRES Provider customers rely on data provided by OPC about customers in order to offer customers an accurate price and to service accounts. When the customer has a Smart Meter, the importance of data access is even more prevalent. OPC's Supplier Tariff should recognize this situation and require OPC to collect and provide access to customer usage data for Smart Meter customers.

**15. Sheet No. 103-51D, Section 20 "Liability and Indemnification"**

As described above, CRES Providers are at the mercy of OPC for many operational issues related to meter data quality and RTO settlement reporting. OPC should not have a "free pass" or exemption from liability if its processes, negligence, data quality, etc. lead to financial damages to CRES Providers. However, OPC's proposed language attempts to severely limit or exempt OPC from liability for its own actions or inactions. RESA finds that the language is inappropriate and one-sided. RESA sets forth below OPC's proposed language for limitations of liability and indemnification, as well as RESA's specific revisions (in a redlined format). RESA points out that these revisions are not intended to shield either OPC or the CRES Providers from their respective actions or inactions; rather, they will balance the playing field.

**a. General Limitation on Liability**

**Under the Company's Supplier Terms and Conditions of Service, The** ~~the~~ Company shall have no duty or liability with respect to Competitive Retail Electric Service before it is delivered by a CRES Provider to an interconnection point with the AEP Rate Zone. **The Company has the duty and responsibility to maintain the interconnection points within the AEP Rate Zone in a good and reasonable working order.** After its receipt of Competitive Retail Electric Service at the point of delivery, the Company shall have the same duty ~~and liability~~ for transmission and distribution service to customers receiving Competitive Retail Electric Service as to those customers receiving electric energy and capacity from the Company. The Company shall ~~have no liability~~ **be liable** to a CRES Provider for any **direct**, consequential, indirect, incidental, special, ancillary, punitive, exemplary, or other damages, ~~(including lost profits, lost revenues, or other monetary losses)~~ arising out of any **intentional acts, negligence,** errors or omissions **on the part of the Company.**

**b. Limitation on Liability for Service Interruptions and Variations**

The Company does not guarantee continuous, regular and uninterrupted supply of service. The Company may, without liability, interrupt or limit the supply of service for the **good faith** purpose of making repairs, changes, or improvements in any part of its system for the general good of the service or the safety of the public or for the **good faith** purpose of preventing or limiting any actual or threatened instability or disturbance of the system. The Company is also not liable for any damages due to accident, strike, storm, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's **reasonable** control.

**c. Additional Limitations On Liability In Connection With Direct Access**

Except as provided in the Company's Supplier Terms and Conditions of Service **and except for matters with the Company's reasonable control**, the Company shall have no duty or liability to a CRES Provider providing Competitive Retail Electric Services arising out of or related to a contract or other relationship between a CRES Provider and a customer of the CRES Provider. The Company shall implement customer selection of a CRES Provider consistent with applicable rules of the Commission **and . The Company** shall have no liability to a CRES Provider providing Competitive Retail Electric Services arising out of or related to switching CRES Provider, unless and to the extent that the Company **(a)** is negligent **or errs** in switching **a customer**, or failing to switch a customer, **or (b) acts intentionally to impede, delay, or preclude the switching of a customer.**

**d. Commission Approval of Limitations on Liability**

The Commission approval of the above language **in with** respect to the limitation of liability arising from the Company's **intentional acts, negligence, errors, and omissions** does not constitute a determination that such limitation language should be upheld in a court of law. **Approval by the Commission merely recognizes that since it is a court's responsibility to adjudicate negligence and consequential damage claims, it should also be the court's responsibility to determine the validity of the exculpatory clause.**

**e. Indemnification**

To the fullest extent permitted by law, the CRES Provider shall defend, indemnify and hold harmless the Company from and against any and all

claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including the Company's employees or any third parties, or any other liability incurred by the Company, including reasonable attorneys' fees, relating to performance under these Supplier Terms and Conditions of Service, except to the extent that a court of competent jurisdiction determines that the losses, expenses or damage were caused wholly or in part by any **intentional, grossly negligent or willful act or omission of the Company.**

**To the fullest extent permitted by law, the Company shall defend, indemnify and hold harmless the CRES Provider from and against any and all claims and/or liabilities for losses, expenses, damage to property, injury to or death of any person, including the CRES Provider's employees or any third parties, or any other liability incurred by the CRES Provider, including reasonable attorneys' fees, relating to performance under these Supplier Terms and Conditions of Service, except to the extent that a court of competent jurisdiction determines that the losses, expenses or damage were caused wholly or in part by any intentional, negligent or willful act or omission of the CRES Provider.**

The ~~CRES Provider's~~ obligation to defend, indemnify and hold harmless under this Article shall survive termination of the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement, and shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable ~~by or for the CRES Provider~~ under any statutory scheme, including any workers compensation acts, disability benefit acts, or other employee benefit acts.

**16. Sheet Nos. 103-53D to 103-61D, Section 23 "Billing Services"**

This Section requires the CRES Provider to select a billing option for each of its customer accounts. Three billing options are provided: (1) Separate billing by the Company and the CRES Provider; (2) Company Consolidated and Rate-Ready Billing, or (3) Company Consolidated and Bill-Ready Billing. In addition, there are numerous new provisions regarding the billing cycle; generation resource mix; setting up certified suppliers' rates; a timetable for setting up certified suppliers' rates; electronic transmission of customer billing data; company consolidated and rate-ready billing; business rules applicable to the Company's consolidated and

rate-ready billing option and to the Company's consolidated bill-ready bill option; notices of abandonment; dispute resolution; billing corrections; and load reports.

RESA largely agrees with the many new provisions proposed. On Sheet No. 103-53D, OPC specifically proposes: "The CRES Provider is responsible for receiving and resolving all customer rate disputes involving charges for services received from the CRES Provider." This sentence overlooks several important facts. First, customers often contact the utility to discuss the bill, including any dispute with the CRES charges and, therefore, OPC will often be consulted. Second, customer payment arrangements with the utility (per budget billing or per a work-out arrangement) will necessarily involve OPC. Therefore, RESA is concerned that OPC's tariff language is too narrowly crafted, and ignores the common realities with billing. Therefore, RESA recommends that, instead of that problematic sentence, the Supplier Tariff reflect that billing disputes involving CRES charges will be addressed by the CRES Provider, and that OPC shall participate reasonably and in good faith when the customer's situation warrants (i.e., when there is budget billing or a work-out arrangement).

RESA will reiterate that implementation of rate-ready and bill-ready billing should be occur as soon as possible since OPC's current bill-ready billing does not function consistently for CRES Providers or their customers. Also, budget billing of both CRES and distribution charges should be available when OPC provides a consolidated bill. RESA stresses, given the fundamental importance of billing, that OPC should be required to invest in a more functional billing system.

On Sheet No. 103-60D, in the paragraph addressing special messages, OPC proposes the following:

Rule 4901:1-24-11 of the Ohio Administrative Code mandates that a CRES Provider must provide notice of abandonment on each billing

statement rendered \* \* \*. Where the Company is performing billing services for a CRES Provider, the Company must provide this notice on the billing statement. The Company is not offering bill message services for CRES Provider in any other instance.

The Company is not required to send bill inserts or add special attachments to the bill format for CRES Providers to communicate to customers. Any other special messages either required by the Commission or elected are the responsibility of the CRES Provider.

This language demonstrates that OPC is attempting eliminate the opportunity for CRES Providers to communicate with their customers via a most logical means of correspondence – the customer bill. CRES Providers should have the opportunity to include special messages, other than notices of abandonment, on consolidated bills. OPC’s language is simply unfair to unilaterally preclude special messages, and the proposal is far from a best practice. RESA is not suggesting that special messages be provided for free; RESA believes that, if a CRES Provider selected that option, the provider should pay the appropriate fee associated with it.

Similarly, RESA contends that OPC is providing no opportunity for CRES Providers to include a logo on the consolidated bill or include a separate page(s) in the bill. Again, it is unfair that these too are not options available for CRES Providers to select and pay for.

**17. Sheet No. 103-61D, Section 24 “Customer Payment Processing and Collections for Consolidated Billing”**

In proposed Section 24, OPC addresses the processing of customer payments and partial payments. RESA finds that OPC’s proposed language is insufficient. OPC’s proposal does not describe how it will provide information regarding CRES customer payments, including the total amount paid to OPC to ensure CRES Providers know the customer made a payment, or how a CRES Provider may receive details on how a payment was applied. This is an incredibly important detail. CRES Providers should receive information that reflects the actual payment (the amount paid and received by OPC), as well as what amount remains owing. This can and

should be done through EDI 528, an industry best practice. When a CRES Provider collects from a customer they have to be able to prove the customer owes the amount. If a customer shows a check that indicates payment to the utility, the CRES Provider has no detail to know or prove how the payment was applied by the utility. The payment priority will only work if both parties have the necessary data to ensure it is being followed. Providing the total amount paid by the customer to the total OPC bill will allow CRES Providers to: (a) see that a payment was made and check that payment was applied to CRES Providers' past due charges first; and (b) verify in collections that no payment was made, or if a payment was made, work with the utility to resolve the matter before placing a customer in collections.

**18. Sheet No. 103-61D, Section 25 “CRES Provider Billing Terms and Conditions”**

In proposed Section 25, the proposed language relates to billing at monthly intervals and CRES Provider payments for charges. RESA has no objection to the proposed language in this section other than to note the requirement to pay within 3 days applies only to those undisputed charges.

**19. Sheet No. 103-61D to 103-62D, Section 26 “Default, Suspension and Termination of a CRES Provider”**

This section lists nine instances that constitute a CRES Provider in default. The proposed tariff also addresses the provision of notice of a default, the effect of a suspension, and the effect of a termination. RESA has no objections with the majority of provisions in Section 26. However, there is one issue to raise. OPC proposes in Section 26b that, except for default due to failure by the CRES Provider to deliver competitive retail electric service, if the Commission does not act within 10 business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the eleventh business day after receipt of the request by the Commission. OPC further proposes that, if the default is due to failure by the

CRES Provider to deliver competitive retail electric service and the Commission does not act within five business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the sixth business day after receipt of the request by the Commission.

RESA contends that the 10-business-day automatic approval period is too short, particularly since factual issues may be in dispute and a hearing may be necessary. Accordingly, RESA suggests that the provision be modified to 30 calendar days. This will allow all parties time to present information to the Commission and allow the Commission to consider the issues, facts, and arguments. It will also allow the Commission time to issue a written ruling. Additionally, RESA notes that the additional days that it suggests are not likely to cause any one party any significant harm, while serious issues are investigated and resolved.

**20. Sheet No. 103-64D, Section 27 "Voluntary Withdrawal by a CRES Provider"  
Sheet No. 103-64D, Section 28 "Dispute Resolution"**

In these sections, OPC's proposal lists the items for which a CRES Provider must reimburse the Company when the CRES Provider withdraws from CRES and fails to provide at least 90 days' electronic notice, and reflects that alternative dispute resolution is available to address disputes and differences between CRES Providers and OPC. RESA has no objection with proposed Sections 27 and 28.

**21. Other**

OPC's standard service tariff includes a provision that customers must provide notice of their intent to leave standard service, and to provide that notice 90 days in advance.<sup>25</sup> This notice is not mentioned in the Supplier Tariff, although it should be included. This 90-day notice is not necessary for OPC. It provides OPC the unique opportunity to discourage the customer from

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<sup>25</sup>OPC Tariff, PUCO No. 20, Schedules OAD GS-2 and GS-3, 1<sup>st</sup> Revised Sheet 321-3D and 323-3D.

switching, which is contrary to a robust marketplace. The Commission should eliminate the 90-day notice requirement by November 1, 2014.

**Conclusion**

In light of the foregoing, a number of modifications to OPC’s proposed Supplier Tariff and proposed CRES Provider Agreement are warranted. Moreover, several of the issues are complex. To aid in their resolution, RESA recommends that the Commission schedule a workshop, at which the parties can develop specific language to address concerns, especially for the terms of the CRES Provider Agreement (i.e., financial assurance terms).

Respectfully submitted,

/s/ M. Howard Petricoff

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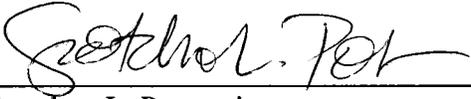
M. Howard Petricoff  
Gretchen L. Petrucci  
Vorys, Sater, Seymour and Pease LLP  
52 E. Gay Street  
P.O. Box 1008  
Columbus, Ohio 43216-1008  
614-464-5414  
614-719-4904 (fax)  
[mhpetricoff@vorys.com](mailto:mhpetricoff@vorys.com)  
[glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)

Date: July 8, 2013

*Attorneys for the Retail Energy Supply Association*

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing document was served by electronic mail this 8th day of July, 2013 upon the persons listed below.

  
\_\_\_\_\_  
Gretchen L. Petrucci

**On Behalf of Ohio Power Company:**

Steven T. Nourse  
American Electric Power Service Corporation  
1 Riverside Plaza, 29th Floor  
Columbus, Ohio 43215  
[stnourse@aep.com](mailto:stnourse@aep.com)

**On Behalf of FirstEnergy Solutions Corp.:**

Mark A. Hayden  
FirstEnergy Services Company  
76 South Main Street  
Akron, OH 44308  
[haydenm@firstenergycorp.com](mailto:haydenm@firstenergycorp.com)

Laura C. McBride  
Ulmer Berne LLP  
1660 West Sixth Street  
Cleveland, OH 44113  
[lmcbride@ulmer.com](mailto:lmcbride@ulmer.com)

**CAPACITY PAYMENT AGREEMENT  
ADDENDUM  
TO  
ELECTRIC DISTRIBUTION UTILITY/  
COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDER AGREEMENT  
FOR OHIO POWER COMPANY'S OHIO RETAIL ACCESS PROGRAM**

**THIS CAPACITY PAYMENT AGREEMENT ADDENDUM** is made and entered into as of \_\_\_\_\_, 2013, between Ohio Power Company ("Company" or "AEP Ohio") and \_\_\_\_\_, a \_\_\_\_\_ ("CRES Provider" or "CRES"). The Company and the CRES Provider are sometimes herein referred to singularly as a "Party" or collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, Company and CRES Provider entered into that certain Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement ("EDU Agreement") for Ohio Power Company's Ohio Retail Access Program dated as of \_\_\_\_\_, 201X, and the Parties desire to include this Addendum as a part of the such agreement;

**WHEREAS**, subject to and in reliance on the terms hereof, Company, as a Fixed Resource Requirement ("FRR") Entity under PJM's Reliability Assurance Agreement ("RAA"), will procure and manage the Capacity in its retail service territory in Ohio necessary during the Delivery Period to satisfy the CRES's Capacity Obligation; and

**WHEREAS**, as a CRES Provider providing competitive retail electric service in AEP Ohio's retail service territory within Ohio, the CRES will pay AEP Ohio the applicable rate for Capacity established pursuant to Schedule 8.1, Section D.8, of the PJM RAA for alternative retail LSEs in AEP Ohio's retail service territory in Ohio; and

**WHEREAS**, AEP Ohio and the CRES desire to enter into this Addendum setting forth their respective obligations; and

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

**ARTICLE 1  
DEFINITIONS**

Capitalized or abbreviated terms not defined in this Article 1 or elsewhere in this Addendum will have the definitions set forth in the PJM Agreements. To the extent the definitions in the PJM Agreements conflict, the order of priority for definitions to be used herein shall be from 1) the PJM RAA, 2) the PJM Operating Agreement, and 3) the PJM OATT. Reference to an agreement, contract or documents includes any subsequent amendments to such agreement, contract or documents unless otherwise stated herein.

**AEP Ohio FRR Capacity Rate** means the applicable rate for Capacity established pursuant to Schedule 8.1, Section D.8, of the PJM RAA, including all adjustments for scaling factoring, Forecast Pool Requirements and applicable losses for alternative retail LSEs in AEP Ohio's retail service territory in Ohio.

**AEP Ohio FRR Reliability Charge** means an amount equal to such CRES's Capacity Obligation (expressed in Megawatts) multiplied by the AEP Ohio FRR Capacity Rate; or such other price as FERC may approve.

**AEP Ohio Transmission Zone** means the set of electrical locations that are provided transmission service by AEP Ohio.

**Affiliate** means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. 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.

**Billing Period** means the period of days for which a PJM invoice is issued. For monthly billing periods, such Billing Period includes the first day of the calendar month through the last day of the calendar month. For weekly billing periods, such Billing Period includes the first day of the calendar month through the Wednesday prior to the date the invoice is issued.

**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.

**Capacity** means, in the case of a Generation Capacity Resource, "Unforced Capacity" or "UCAP" as defined in Section 1.86 of the PJM RAA or, in the case of a Demand Resource or an Energy Efficiency Resource, the "Unforced Capacity" or "UCAP" value attributable to any Megawatts of load reduction capability associated with such Demand Resource or Energy Efficiency Resource as such value is determined by PJM in accordance with the PJM Agreements.

**Capacity Obligation** means, with respect to the CRES, the daily unforced Capacity obligation, including all the adjustments (i.e. gross ups) for reserves and losses, based upon the peak sum of the Capacity tickets for each customer being served by the CRES in any day during the Delivery Period in the AEP Ohio Transmission Zone, including any AEP Ohio adjustments or true ups invoiced by AEP Ohio.

**Charge** means AEP Ohio FRR Reliability Charge, Schedule 9-5 Charges, and Schedule 9-6 Charges, and any other charges applicable to CRES customers in the future associated therewith.

**Delivery Period** means the Effective Date at 12:00:01 a.m. prevailing Eastern Time through and including May 31, 2014, provided that, in the event this Addendum is renewed for an additional year, it means June 1, 2014 through May 31, 2015.

**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 Addendum.

**Interest Index** means the average Federal Funds Effective Rate, defined below, for the period of time the funds are on deposit. The Federal Funds Effective Rate is published daily on the Federal Reserve website <http://www.federalreserve.gov/releases/h15/update/>.

**Load Serving Entity** or **LSE** has the meaning set forth at Section 1.44 of the PJM RAA.

**Letter of Credit** means a standby irrevocable letter of credit acceptable to AEP Ohio issued by a bank or other financial institution with a minimum “A” senior unsecured debt rating (or, if unavailable, corporate issuer rating) from S&P or a minimum “A2” senior unsecured debt rating (or, if unavailable, corporate issuer rating) from Moody’s, in substantially similar form as set forth in Appendix C and including all of the requirements specifically set forth in Section 5.2(b).

**Moody’s** means Moody’s Investors Service, Inc.

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

**Performance Assurance** means cash, a Letter of Credit or a qualifying Guaranty (see Appendix B) provided by the CRES (or a parent company to such CRES) to AEP Ohio pursuant to this Addendum to secure its obligations under this Addendum.

**PJM** means PJM Interconnection, LLC.

**PJM Agreements** means the PJM OATT, the PJM Operating Agreement, and the PJM RAA.

**PJM Balancing Authority** means the collection of generation, transmission, and loads within the metered boundaries of the PJM footprint and for which PJM maintains load resource balance.

**PJM Manual** means a PJM Manual as defined in the PJM Agreements, as such manual may be amended, superseded or replaced from time to time.

**PJM OATT** means the Open Access Transmission Tariff of PJM, as such tariff may be amended, superseded or replaced from time to time.

**PJM Operating Agreement** means the Amended and Restated Operating Agreement of PJM, as such agreement may be amended, superseded or replaced from time to time.

**PJM RAA** means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, as such agreement may be amended, superseded or replaced from time to time.

**S&P** means Standard and Poor’s Rating Services.

**Statement** has the meaning set forth in Section 6.2.

**Taxes** have the meaning set forth in Section 7.2.

**Term** has the meaning set forth in Section 4.1.

**UCC** means the Uniform Commercial Code.

## ARTICLE 2

### GENERAL TERMS AND CONDITIONS

**2.1 AEP Ohio’s Obligations Regarding Capacity** AEP Ohio shall exercise good utility practice in the procurement and management of Capacity necessary to satisfy for the Delivery Period the CRES’s Capacity Obligation.

**2.2 CRES's Payment Obligations** (a) The CRES's Capacity Obligation will be fulfilled by AEP Ohio, and the CRES will pay or be paid for the Capacity Obligation per this Addendum. During the Delivery Period, the CRES shall pay the AEP Ohio FRR Reliability Charge necessary to satisfy the CRES's Capacity Obligation for the Delivery Period, whether billed directly as a convenience by PJM or through billings issued by AEP Ohio.

(b) The CRES shall pay to PJM all Charges for which PJM bills the CRES in each Billing Period in accordance with Section 6.1 by the payment deadline stated on the PJM invoice and all Charges billed by AEP Ohio by the payment deadline stated on the AEP Ohio invoice.

**2.3 PJM Membership; PJM Protocols and Requirements** (a) At all times during the Delivery Period, the CRES shall either i) be a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements or ii) a Load Serving Entity under the PJM RAA that has a duly designated agent per PJM requirements as set forth in Section 1.44 of the RAA that is a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements.

(b) At all times during the Delivery Period, the CRES (or its duly designated agent per Section 1.44 of the RAA) shall be bound by the PJM Agreements, PJM Manuals, the AEP Ohio FRR Load Settlements and any other reasonable operating instructions, policies and procedures set forth by AEP Ohio and/or PJM as may be necessary to implement this Addendum.

### **ARTICLE 3**

#### **REPRESENTATIONS AND WARRANTIES**

Each Party represents to the other Party that all representations and warranties contained in the EDU Agreement are true and accurate as of the date of this Addendum and that such representations and warranties are deemed to be given or repeated by each Party, as the case may be, on the date of this Addendum and with respect to such agreement as supplemented with this amendment hereby.

The CRES hereby represents and warrants to AEP Ohio as follows:

(a) as of the commencement of the Delivery Period, it is either (i) a member in good standing of PJM and qualified as a "Market Buyer" pursuant to the PJM Agreements or (ii) it is a Load Serving Entity under the PJM RAA that has a duly designated agent per PJM requirements as set forth in Section 1.44 of the RAA that is a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements; and

(b) it is knowledgeable and will adhere to all PJM-related protocols necessary to conduct its business.

(c) all representations and warranties contained in this Article shall continue for the term of this Addendum.

#### ARTICLE 4

##### TERM; SURVIVAL OF OBLIGATIONS

**4.1** Term The term of this Addendum will commence upon the Effective Date and continue through the end of the Delivery Period (the “Term”). Upon expiration of the Term, this Addendum shall be automatically renewed for one additional year, unless either Party provides notice of non-renewal no later than thirty (30) days prior to the expiration of the Term. If at any time during the Term, including any renewal thereof, if AEP Ohio reasonably determines that its rights and/or interests under this Addendum are materially affected by the Federal Energy Regulatory Commission, the Public Utilities Commission of Ohio or a court of competent jurisdiction, AEP Ohio may terminate this Addendum upon thirty (30) days prior written notice.

**4.2** Survival of Obligations Termination of this Addendum for any reason shall not relieve the CRES of any obligation accruing on or prior to such termination. All provisions of this Addendum which must, in order to give full force and effect to the rights and obligations of the Parties, survive the termination or expiration of this Addendum shall so survive, including, without limitation, all provisions of Articles 5, and 7, and Sections 4.2 and 6.2(g), in accordance with the terms thereof.

#### ARTICLE 5

##### PERFORMANCE ASSURANCE; CREDIT REQUIREMENTS

**5.1** Credit Requirements; Performance Assurance To meet the credit requirements (“Credit Requirements”) for unsecured credit under this Addendum the CRES must (1) be rated by at least one of the following rating agencies: Moody’s, or S&P and (2) have a minimum senior unsecured debt rating (or if unavailable, corporate issuer rating) of at least BBB- by S&P, or Baa3 by Moody’s. If the CRES is rated by both S&P and Moody’s, and the ratings are split, the lower rating will be used. If the CRES does not meet the Credit Requirements, the CRES shall post and maintain throughout this Addendum adequate Performance Assurance in the amount equal to the sum of ninety (90) days of the CRES’s peak Capacity Obligation times the AEP Ohio FRR Capacity Rate and agrees to replenish and restore any such Performance Assurance in the event AEP Ohio exercises any rights against Performance Assurance posted hereunder. For a CRES that has no retail customers within AEP Ohio’s retail service territory, such CRES’s Performance Assurance will be initially calculated with a Capacity Obligation of 50MW. To the extent that a CRES’s peak Capacity Obligation increases in any month due to an increase in retail

customers, upon notice by AEP Ohio, the CRES will post additional Performance Assurance to AEP Ohio using the formula set forth above within three (3) Business Days of the date of AEP Ohio's notice. AEP Ohio will hold the Performance Assurance through the end of the Delivery Period and shall return such Performance Assurance, less any amount offset against such Performance Assurance for claims, along with, in the case of cash, any interest thereon calculated in accordance with Section 5.4, to the CRES within thirty (30) Business Days of the expiration of the Delivery Period.

**5.2 Acceptable Forms of Security** At the CRES's choice, the following are deemed to be acceptable for posting Performance Assurance:

(a) cash credited to a deposit account of AEP Ohio;

(b) an absolute, unconditional, and irrevocable guarantee issued to AEP Ohio by a parent company or other corporate entity acceptable to AEP Ohio that meets the Credit Requirements. The guaranty shall be drafted in the form attached as Appendix B and otherwise acceptable to AEP Ohio, shall secure all of the CRES's obligations under the Addendum and shall remain in full force and effect until the earlier of the occurrence of any of the following: (i) all of CRES's obligations under the Addendum have been satisfied in full and the Addendum has been terminated, (ii) the guaranty is replaced with substitute Performance Assurance meeting the requirements in the Addendum or (iii) the CRES meets the Credit Requirements; and

(c) a Letter of Credit, which shall state that such Letter of Credit will renew automatically for successive one-year periods, until terminated upon at least ninety (90) days' prior written notice from the issuing financial institution. If AEP Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the CRES will be required to provide a substitute Letter of Credit from an alternative bank satisfying the minimum credit rating set forth in the definition of "Letter of Credit" within three (3) Business Days. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to AEP Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the CRES fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

If the credit rating of a bank or other financial institution from which a CRES has obtained a Letter of Credit falls below the levels set forth in the definition of "Letter of Credit", the CRES will immediately notify AEP Ohio and, within three (3) Business Days of the failure of the financial institution to meet the required credit rating, 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 AEP Ohio. If the CRES fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

The CRES shall also inform AEP Ohio immediately of any changes in its own credit rating or financial condition or the credit rating of its guarantor which, in the case of a CRES, would cause it not to meet the Credit Requirements. Upon the written request of AEP Ohio, the CRES shall affirmatively demonstrate in a manner reasonably satisfactory to AEP Ohio the CRES's compliance with the creditworthiness standards set forth in this Addendum. Notwithstanding anything in this Addendum to the contrary, AEP Ohio may exercise any rights or claims to any Performance Assurance posted, delivered or pledged to them under this Addendum, before, after, concurrently with, or to the exclusion of, any other Performance Assurance posted, delivered or pledged to AEP Ohio.

**5.3 Grant of Security Interest; Remedies** To secure its obligations under this Addendum, the CRES hereby grants to AEP 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 securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered by the CRES (or its agents or custodians) to and held by AEP Ohio pursuant to this Addendum and (ii) all proceeds (as defined in the UCC) of any and all of the foregoing. The CRES agrees to take such action as reasonably required to create and perfect AEP Ohio's first priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or at any time after the occurrence and during the continuation of default by the CRES of its obligation under this Addendum or a misrepresentation by it, AEP Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of AEP Ohio, including the right to set-off and liquidation, against any and all Performance Assurance or other collateral of the CRES in the possession of AEP Ohio, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of the CRES and (ii) draw on any outstanding Letter of Credit provided by the CRES. AEP Ohio will apply the proceeds of the Performance Assurance realized upon the exercise of such rights or remedies to reduce the CRES's obligation under this Addendum, and the CRES shall remain liable for any amounts owing to AEP Ohio after such application, subject to AEP Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full. All notices, demands or requests regarding Performance Assurance or deposit transfers shall be sent in accordance with Section 7.1.

**5.4 Interest on Cash Held by AEP Ohio** AEP Ohio will pay simple interest calculated at Interest Index per annum on all cash held by AEP Ohio pursuant to this Addendum.

## ARTICLE 6

### BILLING AND SETTLEMENT

**6.1 PJM Billing** For each Billing Period, PJM will invoice the CRES its AEP Ohio FRR Reliability Charges, Schedule 9-5 Charges and Schedule 9-6 Charges and the CRES shall pay all such charges when due. PJM will assess to AEP Ohio a corresponding credit after PJM receives payment for such charges from the CRES. AEP Ohio may, from time to time, have PJM create new Billing Line Items (BLIs) to separate charges and credits that are billed on behalf of AEP Ohio versus being billed on behalf of PJM. Any such newly created BLIs will be calculated in the manner required by the RAA and PJM tariff for the corresponding PJM BLIs.

**6.2 AEP Ohio Statement** In the event that AEP Ohio issues a billing to the CRES, including without limitation, billings associated with changes in PJM load data and peak load contribution data changes, and/or AEP Ohio is required to make payment to PJM associated with a CRES obligation or responsibility, including without limitation, due to any CRES's failure to perform its obligations (payment or otherwise) under this Addendum or any errors in PJM bills:

(a) AEP Ohio will prepare and provide an invoice to the CRES, which will show all amounts due to AEP Ohio (the "Statement").

(b) The CRES will make payment within ten (10) Business Days of receipt of the Statement.

(c) All payments shall be subject to adjustment for any arithmetic errors, computation errors, or other errors, provided that the calculation errors become known within six (6) months of the end of the Term.

(d) The CRES shall make payments of funds by electronic transfer to a bank designated by AEP Ohio.

(e) If a good faith dispute arises between AEP Ohio and the CRES regarding a Statement, the CRES shall be obligated to pay the non-disputed portion of the Statement when due, and shall present the dispute in writing and submit supporting detailed documentation to AEP Ohio within fifteen (15) calendar days from the date of the Statement in dispute. Upon resolution of a Statement dispute, any disputed payments of the CRES made to AEP Ohio or any disputed portions that were not paid in full on the Statement due date, will include simple interest on the payment at the Interest Index per annum payable from the date that notice of a Statement dispute was received by AEP Ohio.

(f) If payment is made to AEP Ohio after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee will be calculated at the Interest Index.

(g) In the event of a good faith dispute regarding any Statement, the CRES will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and records of AEP Ohio, such relevance to be determined by AEP Ohio. The right of verification will survive for six (6) months following the end of the Term.

(h) Any of the CRES's payment obligations to AEP Ohio under this Addendum shall be unconditional, shall be made in immediately available funds, without deductions, set-off or counterclaims on the date on which such payment is due.

## **ARTICLE 7**

### **MISCELLANEOUS PROVISIONS**

**7.1 Notices** All notices, demands or requests required or permitted under this Addendum shall be deemed properly made, given to, or served on the Party to which it is directed, when sent in accordance with the EDU Agreement, provided, further that: i) Notice received after the close of the Business Day will be deemed received on the next Business Day, and ii) Notice by email or facsimile transmission will be deemed to have been received by the recipient on the date the recipient confirms receipt either orally or in writing.

**7.2 Taxes** All present and future sales, use, excise or other similar taxes imposed by any federal, state, municipal or other taxing authority by reason of the payments arising under this Addendum by a CRES under this Addendum (collectively, the "Taxes") will be the liability of the CRES. The CRES shall pay all 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 CRES will, if requested, provide AEP Ohio with valid tax exemption certificates. Should AEP Ohio be required to remit any Taxes directly to any applicable taxing authority, the CRES will defend and indemnify AEP Ohio and will pay to AEP 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 (i) the reporting of any Taxes payable by the CRES; (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.

**7.3 Rules of Interpretation** The following principles shall be observed in the interpretation and construction of this Addendum:

- (a) unless otherwise stated, the terms “include” and “including” when used in this Addendum shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
- (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Addendum and shall be ignored in construing or interpreting the obligations of the parties under this Addendum;
- (c) references to the singular include the plural and vice versa;
- (d) references to Articles, Sections, Appendices and the preamble are, unless the context indicates otherwise, references to Articles, Sections, Appendices and the preamble of this Addendum;
- (e) any reference to laws, rules, regulations, ordinances or decrees in this Addendum shall mean such law, rules, regulations, ordinances and decrees as may be amended, modified, replaced, codified or superseded from time to time; and
- (f) this Addendum shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties (or any of them), or to impose any partnership obligation or liability upon any Party.
- (g) The Parties agree that the normal rule of construction, to the effect that any ambiguities are to be resolved against the drafting Party, shall not be employed in the interpretation of this Addendum.
- (h) This Addendum may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument.

**7.4 Confidentiality** (a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Addendum without consent of such Party; provided however that a Party may disclose such document or information without the consent of the other Party (i) if required by any federal, state or local agency or by a court of competent jurisdiction, provided that the disclosing Party shall seek a protective order or other legal protection as is reasonably available under the circumstances to preserve the confidentiality of the document or information; (ii) to its directors, trustees, employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Addendum, provided that they have been advised of the confidentiality provisions of this Section 7.4, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC; (iii) if such document or information is generally available to the public; or (iv) if such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

(b) Notwithstanding any other provision of this Section 7.4, either Party may disclose any document or information furnished by the other Party in connection with this Addendum without the consent of the other Party to (i) PJM or the PJM Market Monitor or (ii) to the extent required or that the disclosing Party deems appropriate before any regulatory agency or court (in which case the proviso in Section 7.4(a)(i) shall apply).

(c) No Party, nor any of its employees or agents, will be responsible or liable to any other Party for any disclosure of data or information permitted under this Section 7.4.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 7.4. Each Party accordingly agrees that the other Party shall be entitled to seek equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 7.4.

**7.5 Amendment** This Addendum shall not be amended, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. The rates, terms and conditions contained in this Addendum are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review for changes to this Addendum proposed by a Party, a non-Party or FERC acting sua sponte shall be the "public interest" 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) and affirmed by *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington*, 128 S. Ct. 2733 (2008).

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

Ohio Power Company

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

**[CRES]**

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

**APPENDIX A TO ADDENDUM**  
**FORM OF CRES STANDBY LETTER OF CREDIT**

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

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

To: Ohio Power Company (“Beneficiary”)

1. We hereby establish in your favor this irrevocable transferable Standby Letter of Credit (this “Letter of Credit”) for the account of \_\_\_\_\_ (the “Applicant”), in the aggregate amount of \$ \_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended, in accordance with the provisions hereof or otherwise extended.

2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof. This Letter of Credit may be drawn in the event that (i) the Applicant fails to perform any obligation set forth in that certain Capacity Payment Addendum between the Applicant and you dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Addendum is false or misleading in any material respect when made, or you receive notice from us that this Letter of Credit is being cancelled and the Applicant fails to provide a substitute Letter of Credit from us or an alternative bank satisfying the requirements in such Addendum, or if our credit rating falls below the levels set forth in Paragraph 11 of this Letter of Credit and the Applicant fails to obtain a suitable Letter of Credit from another bank or other financial institution that meets the standards set out in such Addendum.

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) on such Business Day to (Bank), (address), (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of each of the Beneficiary and (ii) your draft in the form of Annex 2 hereto, appropriately completed and duly signed by an Authorized Officer of each of the Beneficiary. “Authorized Officer” shall mean President, Treasurer, any Vice President, any Assistant Treasurer or any other person holding an equivalent title.

4. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.

5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. 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 herein above, 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 herein above.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not 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 amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with Paragraph 4 herein above; 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

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

8. As used herein:

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

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

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity 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 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 either the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or the senior unsecured debt rating of “A2” from Moody’s Rating Service.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.

13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.

14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or 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 \_\_\_\_\_ above (as per Applicant's instructions). The aggregate amount paid to Ohio Power Company during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the 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 each 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 \$ \_\_\_\_\_, in the event that the Applicant fails to perform any obligation set forth in that certain Addendum between the Applicant and Ohio Power Company dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Addendum is false or misleading in any material respect when made, or due to receipt from you of notice that the Letter of Credit is being cancelled and the Applicant has failed to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in such agreement, or due to a decline in your credit rating below the levels set forth in Paragraph 11 of the Letter of Credit and the Applicant has failed to obtain a substitute Letter of Credit from another bank or other financial institution that meets the standards in such agreement.
3. 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,

Ohio Power Company

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: Ohio Power Company

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

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

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

(Bank)

(Address)

Ohio Power Company

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:

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' Addresses]

Very truly yours,

Ohio Power Company

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

Name:

Title:

Date:

Agreed and Accepted

(Bank)

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

Date:

APPLICANT NAME

(Applicant Name)

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

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.

Ohio Power Company

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

cc: \_\_\_\_\_ (Applicant Name)

**Annex 5 to Letter of Credit**

NOTICE OF EXTENSION  
OF LETTER OF CREDIT NO. \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

To Ohio Power Company:

Re: Our Letter of Credit no. \_\_\_\_\_ presently in the aggregate amount of  
USD \_\_\_\_\_ issued for the account of \_\_\_\_\_ and expiring on  
\_\_\_\_\_.

On the expiration date of the Letter of Credit No. \_\_\_\_\_, we will issue a new Letter of Credit  
No. \_\_\_\_\_ to expire on \_\_\_\_\_ (date). This new Letter of Credit No.  
\_\_\_\_\_ will, aside from the expiration date, be in the amount and form of our Letter of  
Credit No. \_\_\_\_\_.

Very truly yours,

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,

Ohio Power Company

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

(Name of authenticating party)

\_\_\_\_\_  
(Authorized signature, name and title of authenticating party)

**APPENDIX B TO ADDENDUM**  
**FORM OF GUARANTY**  
**CORPORATE GUARANTY**

TO: Ohio Power Company, its successors and assigns, and any of its subsidiaries ("AEP").

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, and to induce AEP to do business with [Name of CRES Provider], a [State of incorporation] corporation ("Debtor"), the undersigned [Name of Guarantor] ("Guarantor"), hereby unconditionally and absolutely guarantees the full and prompt payment and performance of all present and future obligations of Debtor to AEP, up to an aggregate amount of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_,\_\_\_\_), arising from Debtor's and AEP's Capacity Payment Addendum, whether such obligations are due or to become due, secured or unsecured, absolute or contingent, joint or several (collectively, the "Obligations"). GUARANTOR'S OBLIGATION UNDER THIS CORPORATE GUARANTY ("GUARANTY") IS A GUARANTY OF PAYMENT AND NOT OF COLLECTION. SHOULD ANY PRESENT OR FUTURE OBLIGATIONS INCURRED BY DEBTOR NOT BE PAID WHEN DUE, AEP MAY PROCEED AGAINST THE GUARANTOR FOR SUCH INDEBTEDNESS AT ANY TIME, WITHOUT NOTICE AND WITHOUT ANY PROCEEDING OR ACTION AGAINST DEBTOR, AND GUARANTOR HEREBY WAIVES ANY DEMAND FOR PAYMENT. This Guaranty is a primary obligation of Guarantor and shall be construed as an unconditional, absolute and continuing guaranty, irrespective of the validity or enforceability of the underlying agreements between AEP and Debtor or any other guaranteed amount, the absence of any action to enforce the same or any circumstances which might otherwise constitute a legal or equitable discharge or defense of a guarantor.

Guarantor hereby waives notice of acceptance of this Guaranty, notice of the transactions between AEP and Debtor, notice of the execution and delivery, amendment, extension or renewal of any present or future instrument pertaining to Obligations, diligence, presentment, demand for payment, protest, notice of default by Debtor, and any other notice not expressly required by this Guaranty. Guarantor further consents, without further notice, to any extension or extensions of the time or times of payment of said Obligations, or any portion thereof, and to any change in form or amount, or renewal at any time, of such Obligations, or any portion thereof, in each case up to an aggregate amount of \_\_\_\_\_ U.S. Dollars (\$\_\_\_\_,\_\_\_\_).

This Guaranty shall remain in full force and effect with respect to the Obligations until finally and irrevocably paid in full. No termination of this Guaranty shall affect any Obligations outstanding or contracted or committed for at the time of termination, and this Guaranty shall remain in full force and effect with respect to such Obligations until finally and irrevocably paid in full. In the event that any payment to AEP in respect of the Obligations is rescinded or must otherwise be returned for any reason whatsoever, Guarantor shall remain liable hereunder in respect of such Obligations as if such payment had not been made. Guarantor reserves the right to assert defenses that Debtor may have to payment of any Obligation other than defenses arising from the bankruptcy or insolvency of Debtor or similar proceedings affecting Debtor and other defenses expressly waived hereby.

Guarantor's obligations hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, nor by any extension, or the acceptance of any sum or sums on account of Debtor, or of any note or draft of Debtor and/or any third party, or security from Debtor. AEP shall not be obligated to file any claim relating to the Obligations owing to it in the event that Debtor becomes subject to bankruptcy, insolvency, reorganization,

liquidation, dissolution, or similar proceedings affecting Debtor (whether voluntary or involuntary), and the failure of AEP to so file shall not affect Guarantor's obligations hereunder.

Should any present or future Obligations incurred by Debtor not be paid when due or at the time to which the same may be extended, AEP may proceed against Guarantor for such Obligations at any time, without notice and without any proceeding or action against Debtor. Guarantor agrees that AEP may resort to Guarantor for payment of any of the Obligations, whether or not AEP shall have resorted to any collateral security, or shall have proceeded against any other debtor principally or secondarily obligated with respect to any of the Obligations or any other guarantor thereof.

Guarantor shall not exercise any rights, which it may have or acquire by way of subrogation until all of the Obligations are paid in full to AEP. If any amounts are paid to Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of AEP and shall forthwith be paid to AEP by Guarantor to reduce the amount of outstanding Obligations, whether matured or unmatured. Subject to the foregoing, upon payment of all of the Obligations to AEP, Guarantor shall be subrogated to the rights of AEP against Debtor, and AEP agrees to take at Guarantor's expense such actions as Guarantor may reasonably require to implement such subrogation.

The obligations of Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction, abatement or defense based upon any claim Guarantor or the Company may have against AEP.

This Guaranty shall not be affected by any change in the entity status or business structure of Debtor. If Debtor's assets or a major portion thereof are transferred to any other party or parties otherwise than by operation of law, and if AEP enters into any transaction whereby such transferee or transferees become indebted to AEP, this Guaranty, subject to all the other terms hereof, shall apply to any Obligations or balance of Obligations of such other transferee or transferees to AEP.

This Guaranty shall inure to and be binding upon the parties, their representatives, successors and assigns, provided that Guarantor may not assign or otherwise transfer any of its obligations under this Guaranty, whether by operation of law or otherwise, without the prior written consent of AEP, which consent may be arbitrarily withheld. AEP may assign this Guaranty in its sole discretion.

In the event AEP engages in litigation to enforce this Guaranty, Guarantor agrees to pay, in addition to any amounts of Debtor which Guarantor has otherwise guaranteed to pay hereunder, any and all costs and expenses incurred by AEP (including reasonable attorneys' fees) in enforcing this Guaranty.

Guarantor represents and warrants that, at the time of execution and delivery of the Guaranty, nothing (whether financial condition or any other condition or situation) exists to impair in any way the obligations and liabilities of Guarantor to AEP under this Guaranty. Guarantor further represents and warrants to AEP that: (a) it is a corporation duly organized, validly existing and in good standing in its jurisdiction of incorporation, with full power and authority to make and deliver this Guaranty; (b) that the execution, delivery and performance of this Guaranty by Guarantor have been duly authorized by all requisite corporate action of Guarantor, and does not and will not violate provisions of any applicable law or Guarantor's certificate of incorporation or bylaws; and (c) that the person signing this Guaranty on Guarantor's behalf has been properly authorized by corporate action to do so.

This Guaranty constitutes the entire agreement among the parties and supersedes and cancels any prior agreements, undertakings, declarations and representations, whether written or oral, regarding the subject matter of this Guaranty. If any provision of this Guaranty is found by a court of competent jurisdiction to be void, illegal or otherwise unenforceable in that jurisdiction, such provision, to the extent of its invalidity, shall be severed from this Guaranty and be ineffective in that jurisdiction; provided, however,

that such finding shall not affect the validity, legality or enforceability of such provision in any other jurisdiction or the validity, legality or enforceability of any other provision of this Guaranty.

The rights and duties of the Guarantor, Debtor and AEP under this Guaranty shall be construed and enforced in accordance with, and governed by the laws of, the State of Ohio.

IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty on this \_\_\_\_ day of \_\_\_\_\_  
\_\_\_\_, \_\_\_\_.

[GUARANTOR]

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Guarantor's Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

Guarantor's Federal Tax Identification Number: \_\_\_\_\_

**FIRST AMENDMENT  
TO  
ELECTRIC DISTRIBUTION UTILITY/  
COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDER AGREEMENT  
FOR OHIO POWER COMPANY'S OHIO RETAIL ACCESS PROGRAM**

To address the issue of capacity purchase and payment, this First Amendment to the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement is hereby made and entered into as of \_\_\_\_\_, 2013, between Ohio Power Company ("Company" or "AEP Ohio") and \_\_\_\_\_, a \_\_\_\_\_ ("CRES Provider" or "CRES"). The Company and the CRES Provider are sometimes herein referred to singularly as a "Party" or collectively as the "Parties."

**WITNESSETH:**

**WHEREAS**, Company and CRES Provider entered into the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement for Ohio Power Company's Ohio Retail Access Program dated \_\_\_\_\_, 201X, and the Parties desire now to include this First Amendment as a part of that Agreement;

**WHEREAS**, subject to and in reliance on the terms hereof, Company, as a Fixed Resource Requirement ("FRR") Entity under PJM's Reliability Assurance Agreement ("RAA"), will procure and manage the Capacity in its retail service territory in Ohio necessary during the Delivery Period to satisfy the CRES's Capacity Obligation; and

**WHEREAS**, as a CRES Provider providing competitive retail electric service in AEP Ohio's retail service territory within Ohio, the CRES will pay AEP Ohio the applicable rate for Capacity established pursuant to Schedule 8.1, Section D.8, of the PJM RAA for alternative retail LSEs in AEP Ohio's retail service territory in Ohio; and

**WHEREAS**, AEP Ohio and the CRES desire to enter into this Amendment setting forth their respective obligations; and

**NOW, THEREFORE**, in consideration of the recitals set forth above and the mutual covenants and promises set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby covenant, promise and agree as follows:

**ARTICLE 1  
DEFINITIONS**

Capitalized or abbreviated terms not defined in this Article 1 or elsewhere in this Amendment will have the definitions set forth in the PJM Agreements. To the extent the definitions in the PJM Agreements conflict, the order of priority for definitions to be used herein shall be from 1) the PJM RAA; 2) the PJM Operating Agreement; and 3) the PJM OATT.

Reference to an agreement, contract or documents includes any subsequent amendments to such agreement, contract or documents unless otherwise stated herein.

**1.1 AEP Ohio FRR Reliability Charge** means an amount equal to such CRES's Capacity Obligation (expressed in Megawatts) multiplied by the AEP Ohio FRR Capacity Rate which unless amended by the Public Utilities Commission of Ohio or the Federal Energy Regulatory Commission shall be PJM Reliability Price Mechanism including all adjustments for scaling factoring, Forecast Pool Requirements and in AEP Ohio's retail service territory in Ohio as established by the Public Utilities Commission of Ohio in Case No. 10-2929-EL-UNC..

**1.2 Agreement** means the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement previously executed by the Parties.

**1.3 Capacity** means, in the case of a Generation Capacity Resource, "Unforced Capacity" or "UCAP" as defined in Section 1.86 of the PJM RAA or, in the case of a Demand Resource or an Energy Efficiency Resource, the "Unforced Capacity" or "UCAP" value attributable to any Megawatts of load reduction capability associated with such Demand Resource or Energy Efficiency Resource as such value is determined by PJM in accordance with the PJM Agreements.

**1.4 Capacity Obligation** means, with respect to the CRES, the daily unforced Capacity obligation, including all the adjustments (i.e., gross ups) for reserves and losses, based upon the peak sum of the Capacity tickets for each customer being served by the CRES in any day during the Delivery Period in the AEP Ohio Transmission Zone, including any AEP Ohio adjustments or true ups invoices by AEP Ohio.

**1.5 Delivery Period** means the Effective Date at 12:00:01 a.m. prevailing Eastern Time through and including May 31, 2015.

**1.6 Load Serving Entity or LSE** has the meaning set forth at Section 1.44 of the PJM RAA.

**1.7 PJM** means PJM Interconnection, LLC.

**1.8 PJM Agreements** means the PJM OATT, the PJM Operating Agreement, and the PJM RAA.

**1.9 PJM Manual** means a PJM Manual as defined in the PJM Agreements, as such manual may be amended, superseded or replaced from time to time.

**1.10 PJM RAA** means the Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, as such agreement may be amended, superseded or replaced from time to time.

**ARTICLE 2  
AMENDMENTS TO THE AGREEMENT**

**2.1 AEP Ohio's Obligations Regarding Capacity**

AEP Ohio shall exercise good utility practice in the procurement and management of Capacity necessary to satisfy CRES's Capacity Obligation through the Delivery Period.

**2.2 CRES's Obligations As To Capacity**

CRES agrees to obtain its Capacity Obligation from AEP Ohio and render payment for such capacity in accordance with this Amendment.

**2.3** The CRES shall pay to PJM all Charges for which PJM bills the CRES in each Billing Period in accordance with Section 4.1 by the payment deadline stated on the PJM invoice.

**2.4** At all times during the Delivery Period, the CRES shall either i) be a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements or ii) a Load Serving Entity under the PJM RAA that has a duly designated agent per PJM requirements as set forth in Section 1.44 of the RAA that is a member in good standing of PJM and qualified by PJM as a "Market Buyer" pursuant to the PJM Agreements.

**2.5** At all times during the Delivery Period, the CRES (or its duly designated agent per Section 1.44 of the RAA) shall be bound by the PJM Agreements, PJM Manuals, the AEP Ohio FRR Load Settlements and any other reasonable operating instructions, policies and procedures set forth by PJM as may be necessary to implement this Amendment

**ARTICLE 3  
TERM; SURVIVAL OF OBLIGATIONS**

**3.1 Term**

The term of this Amendment will commence upon the Effective Date and continue through the end of the Delivery Period.

**3.2 Survival of Obligations**

Termination of this Amendment or the Agreement for any reason shall not relieve CRES or AEP Ohio of any obligation accruing on or prior to such termination. All provisions of this Amendment which must, in order to give full force and effect to the rights and obligations of the Parties, survive the termination or expiration of this Amendment shall so survive.

**ARTICLE 4  
BILLING AND SETTLEMENT**

**4.1 PJM Billing**

For each Billing Period, PJM will invoice the CRES for its AEP Ohio FRR Reliability Charges, Schedule 9-5 Charges and Schedule 9-6 Charges and the CRES shall pay all such charges when due. PJM will assess to AEP Ohio a corresponding credit after PJM receives payment for such charges from the CRES. AEP Ohio may, from time to time, have PJM create new Billing Line Items (BLIs) to separate charges and credits that are billed on behalf of AEP Ohio versus being billed on behalf of PJM. Any such newly created BLIs will be calculated in the manner required by the RAA and PJM tariff for the corresponding PJMBLIs.

**4.2** If CRES does not make timely payment of all Capacity charges invoiced by PJM, AEP Ohio may send additional invoices and institute collection remedies provided for in this Agreement.

**ARTICLE 5  
MISCELLANEOUS PROVISIONS**

**5.1 Amendment**

This First Amendment shall not be changed, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties.

**5.2 Dispute Resolution of Capacity**

Disputes as to Capacity Obligation or payment for capacity shall be resolved at the Public Utilities Commission of Ohio.

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

**OHIO POWER COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**[CRES]**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**7/8/2013 5:06:44 PM**

**in**

**Case No(s). 13-0729-EL-ATA**

Summary: Comments Initial Comments electronically filed by M HOWARD PETRICOFF on behalf of Retail Energy Supply Association