

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	)	
Ohio Power Company to Amend Its	)	Case No. 13-729-EL-ATA
Supplier Coordination Tariff and	)	
Related Contracts	)	

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**REPLY COMMENTS OF  
OHIO POWER COMPANY**

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**INTRODUCTION**

Ohio Power Company (AEP Ohio) filed its Application on March 22, 2013, proposing tariff changes to update its Supplier Coordination Tariff and get approval for related contracts between CRES Providers and AEP Ohio. The intention of the tariff filing is to adopt best practices of other electric distribution utilities (*i.e.*, incorporating several provisions previously approved by the Commission for those EDUs) and to provide greater transparency and certainty for CRES Providers as well as AEP Ohio. AEP Ohio's shopping levels have dramatically increased over the past year or so, and presently more than half of the load in its service territory is shopping. Thus, contrary to the impression given by some commenters, retail choice is thriving in AEP Ohio's service territory. While any EDU experiencing such significant shopping levels is likely to experience some "growing pains" – as AEP Ohio has – the Company continues to strive toward transparent and efficient operations to support retail choice in its service territory. But AEP Ohio's existing Supplier Tariff is outdated and not sufficiently sophisticated to effectively support this present wave of competition. Thus, as further detailed below, the Company's proposals are reasonable and are needed to update its Supplier Tariff and continue to promote competition in its service territory.

However, based on an unexpected level of concern being expressed by CRES Providers for some of the proposed tariff and contract changes being pursued by AEP Ohio, the Company would like to supplement its prior efforts to achieve consensus among the interested parties. Specifically, without prejudice to any of the Company's litigation positions as outlined herein, AEP Ohio would like to enlist the Staff's input and assistance and conduct additional meetings with CRES Providers and other interested parties prior to the Commission proceeding forward in this docket. Based on the input and recommendations made by commenters thus far, the Company believes some level of additional consensus can be reached. After conducting such meetings, the Company will notify the Commission as to the outcome of the collaborative effort so that the case can move forward at that time and commits to do so within 60 days. Absent further direction from the Commission, the Company intends to pursue this course of action.

## **REPLY COMMENTS**

### **I. The Application does not trigger the rate increase provisions of R.C. 4909.18 and was appropriately filed as a "not for increase" tariff amendment.**

AEP Ohio filed the proposed tariff changes under R.C. 4909.18's "not an increase" provisions, as indicated on the face of the Application. In response, certain parties wrongly suggest that the Application constitutes a rate increase and that, therefore, the additional requirements apply.<sup>1</sup> In a similar vein, the Ohio Energy Group (OEG) generally questions the process being used and suggests scheduling an additional technical conference. While the Company does intend to pursue additional informal discussions with CRES Providers and interested customer groups as referenced above,

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<sup>1</sup> See Industrial Energy Users-Ohio (IEU) Comments at 2-3; Duke Energy Retail Sales, LLC (DERS) Comments at 1-2.

there is no statutory requirement to comply with the additional process or requirements associated with a rate increase – most notably to conduct an evidentiary hearing.

The Court has held that “an application not involving a rate increase ... necessarily includes an application either to establish for the first time a rate or to reduce the rate once established. This procedure comprehends ‘an original or first filing.’” The rule, as derived from *Cookson*, is that if there is a first filing involved, it is a “new service” under R.C. 4909.18. ... [A] first filing, by definition, cannot be an application for an increase in rates. *City of Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 448, 424 N.E.2d 561 Ohio (1981). More recently, in the context of an appeal involving R.C. Chapter 4928, the Court again clarified that “R.C. 4909.18 applies to increases of an ‘existing’ rate charged by a utility.” *Ohio Consumers’ Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 300, 305 (2006). AEP Ohio further questions whether the retail ratemaking process and protections in R.C. Chapter 4909 can apply at all to the provision of wholesale services by an EDU under R.C. Chapter 4928. Applying these principles here, it is clear that there is no rate increase under R.C. 4909.18 being requested in the Application.<sup>2</sup>

As a threshold matter, there is no existing rate that is being increased through the tariff amendments in this case. The new charges being proposed constitute a “first filing” and are not properly considered rate increases. For example, DERS alleges that the \$95/hour administrative fee for “non-standard rates” is a rate increase that is not permitted by this filing. However, AEP Ohio is not imposing a rate for any services it currently offers. It is simply stating that, if a CRES Provider wants to design new rates, it should be required to compensate AEP Ohio for the

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<sup>2</sup> AEP Ohio notes that, as further discussed below in connection with Section 17, the Company is withdrawing presently without prejudice its proposal to implement a cost-based charge for consolidated billing. While implementing such a new charge would likewise not constitute a rate increase under R.C. 4909.18, AEP Ohio has decided for other reasons to withdraw that proposal at this time and without prejudice to any future filing.

cost in developing them. In order to remove the \$95/hour fee, AEP Ohio would also have to remove the option to implement non-standard rates. Similarly, DERS improperly characterizes AEP Ohio's proposal to charge \$50 for a manual interval load data report as a rate increase. While AEP Ohio has charged this same rate for years by contract, this is a "first filing" for the tariff; in any case, the rate remains at the present level and cannot be characterized as a rate increase according to the *City of Cleveland* case discussed above.

In the same vein, IEU's theory that the Application constitutes a rate increase is also misguided. IEU argues that the Application affects how a customer's capacity obligation will be determined and asserts (at 2) that the Application "may affect" customers' electric bills based on IEU's own conclusion (at 3) that it cannot determine whether customer rates will result in an increase under the Application. This sort of indirect and vague claim that a rate increase may somehow occur – indirectly or overtly – is not enough to conclude that the rate increase provisions of R.C. 4909.18 are triggered. The Court has held that, even where the potential effect of the new offerings affect the "value" of existing services, that effect does not compel notice and hearing under R.C. 4909.18 – but may be a basis to consider the "reasonableness" of the new offerings. *Ohio Domestic Violence Network v. Pub. Util. Comm.*, 156 P.U.R.4th 516, 638 N.E.2d 101, 1022 Ohio (1994) (internal citations omitted). In short, the Commission is not required to conduct an evidentiary hearing in this case because the Application was properly filed as a not-for-an-increase ATA under R.C. 4909.18.

**II. A capacity agreement is needed to establish CRES Providers' contractual obligations to AEP Ohio for payment and credit, given AEP Ohio's existing obligation to support capacity for shopping load served by CRES Providers.**

AEP Ohio recently attempted to secure bilateral written contracts with CRES Providers to document each CRES Provider's legal obligation to pay AEP Ohio for capacity and to address credit/security matters related to that obligation. Some CRES Providers voluntarily signed the proposed agreement and others objected to signing it. While some CRES Providers objected because they thought PJM billing procedures already provided security and ensured payment for capacity, the fact is that PJM only bills for convenience when it comes to capacity that is supported by a Fixed Resource Requirements (FRR) entity such as AEP Ohio. Other objections were based on specific provisions in the proposed agreement, some of which have been resolved through AEP Ohio's agreement to modify or delete the provisions. In any case, there can be no doubt that AEP Ohio provides capacity to support shopping load served by CRES, and the Company is entitled to have a contract with the CRES Providers for the provision of capacity that also addresses credit and security to enforce the CRES Providers' obligations.

RESA characterizes the capacity agreement (at 2) as "unauthorized" and dramatically asserts that CRES Providers who have signed the agreement "must be released from that contract of adhesion." In reality, RESA admits elsewhere (at 3) that AEP Ohio has not taken any action against CRES Providers that have not voluntarily signed the proposed capacity contract. While AEP Ohio did not specifically request approval of the capacity agreement through its Application, AEP Ohio's intention (consistent with Par. 7 of the Application) is that CRES Providers will be migrated from their existing agreements to any new updated agreements.

As to whether a capacity contract is needed, RESA admits (at 3) that AEP Ohio "may need additional documentation as to privity of contract between the CRES Provider and [AEP Ohio] for [AEP Ohio] to enforce collections from non-capacity paying CRES Providers." RESA goes on to suggest that the capacity agreement should be merged into the existing CRES-EDU

agreement instead of being separate. As AEP Ohio has informally indicated to RESA, an addendum to the existing agreement is acceptable provided that it includes the key provisions that are needed. To that end, RESA's Exhibit B is not acceptable since it clearly does not address the provision of credit security to AEP Ohio for FRR Capacity provided to a CRES Provider and it fails to acknowledge that such charges are technically AEP Ohio charges, not PJM charges.

As made clear to RESA on multiple occasions, PJM's bills are only issued by PJM as an administrative convenience. PJM could elect to stop billing such Capacity charges at any time and/or render an incorrect billing. Moreover, as underscored previously, PJM does not bill for or obtain security for any AEP Ohio FRR Capacity, which is contrary to how PJM handles billing and credit requirements for RPM Capacity. RESA also ignores that the Capacity Payment Agreement conforms to and is modeled after Capacity Payment Agreements already implemented and used by other EDUs within the State of Ohio. RESA apparently wants to treat AEP Ohio in a different fashion. A Capacity Payment Agreement is necessary to:

- Clarify Capacity Payment Obligation deadlines, for both monthly obligations and credit obligations.
- Provide adequate security to AEP Ohio for the provision of FRR Capacity, which AEP Ohio has determined to be 90 days of a Capacity Payment Obligation, based on AEP Ohio's current tariffs and the PJM process. For clarification and as a point of emphasis, AEP Ohio has approached credit issues for FRR Capacity using the same discipline and analysis used with regard to its energy credit/security requirements, an approach that was recently validated by the PUCO through the grant of a waiver to various tariff terms and conditions. (See *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 dated July 2, 2013.)
  - Providing AEP Ohio a security interest in any performance assurance held to support a CRES Provider's Capacity Payment Obligation, a standard commercial practice when collateral is posted.

- Clearly spelling out the remedies when a CRES Provider fails to meet its Capacity Payment Obligation
- Setting forth terms and conditions for acceptable forms of security (forms of Letters of Credit or forms of guaranties) so as to communicate and be transparent about the requirements for all CRES Providers and avoid disputes over what does or does not qualify as acceptable security for the Capacity Payment Obligation.

It should be noted that AEP Ohio has already offered to make significant modifications to the Capacity Payment Agreement terms originally proposed by AEP Ohio by removing various non-core provisions based on feedback provided by CRES Providers. The Capacity Payment addendum covers the basics, payment obligations and credit requirements. It does not attempt to seek more security for AEP Ohio than is reasonable.

As referenced above, AEP Ohio is willing to continue discussing a mutually acceptable capacity addendum with the affected CRES Providers. But absent a mutual agreement within a reasonable period of time, the Commission needs to require CRES Providers to sign the capacity addendum or else have their certificate suspended or terminated.

**III. The credit terms extended by AEP Ohio for capacity and energy are reasonable during the transition period and should be approved by the Commission.**

Certain commenters complain that AEP Ohio's credit terms and collateral requirements are overstated or excessive, with most criticisms focusing on the Company's capacity collateral requirements.<sup>3</sup> However, these criticisms are unwarranted. AEP Ohio's credit policies are reasonable and should be enforced by the Commission in this case.

O.A.C. 4901:1-24-08(A) states, "Pursuant to a tariff filed with the commission in accordance with rule 4901:1-10-29 of the Administrative Code, an electric utility may require a

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<sup>3</sup> See Border Energy Electric Services, Inc. (Border) Comments at 1-3; FES Comments at 3-9; RESA Comments at 3-5; IEU Comments at 7-9.

retail electric generation service provider to issue and maintain a financial instrument with the electric utility to protect the electric utility in the event that the retail electric generation service provider fails, in whole or in part, to deliver contracted retail generation service to a customer for which the electric utility supplied to the customer in its capacity as default supplier.” Subsection (B) continues, “An electric utility may require a retail electric generation service provider to furnish financial and other information contained in its tariff to determine the type and/or amount of the financial instrument required for compliance with paragraph (A) of this rule.”

Collateral requirements are and should remain a fundamental part of doing business as a CRES Provider in AEP Ohio’s service territory. There is no reason that AEP Ohio (or its customers) should be under-secured or bear the ultimate financial burden of CRES Provider default. The OAC’s and the proposed tariff’s credit requirements appropriately flow through from the rule to the tariff to the EDU/CRES Agreement. While this is true today for energy, it also needs to be established for capacity obligations.

Generally, under AEP Ohio’s credit requirements, if a CRES Provider has an investment grade credit rating it will be provided a line of credit consistent with that rating. If a CRES Provider or its guarantor either does not have an investment grade rating or it has exceeded its set credit limit, it can post collateral consistent with the Tariff (irrevocable letter of credit, cash deposit, surety bond, etc.). A summary of AEP Ohio’s proposed CRES Energy Supply Credit Requirements is attached hereto at Attachment A.<sup>4</sup>

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<sup>4</sup> Please note that the credit policy incorporates a 15-day return to SSO upon CRES Provider default due to the waiver that is currently in place, as discussed above. In addition, Attachment A incorporates changes to which AEP Ohio has agreed based on input already received from CRES Providers to date – some of which were not reflected in the original proposed tariffs reflected in the Exhibit B-2 of the Application. The revised tariff proposal that is attached to these Reply comments, Attachment E (Revised Application Exhibit B-2) is consistent with Attachment A.

With respect to AEP Ohio's proposed approach to CRES credit requirements, the process is straightforward and generally can be broken into two steps: (1) determining a CRES Provider's creditworthiness in connection with applying a credit limit; and (2) calculating the risk in a manner so that the amount of the security required remains commensurate with the financial risk placed on the Company by that CRES Provider.

AEP Ohio will first evaluate the creditworthiness of a CRES Provider or its guarantor, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). AEP Ohio will also look at the scope of operations of a CRES Provider and the level of risk it presents to AEP Ohio. If a provider has investment grade ratings from two of the three major credit ratings agencies (Standard & Poor's, Moody's, or Fitch), it may be granted unsecured credit up to a threshold determined by AEP Credit Risk Management. If split rated, the lowest rating will be used. These creditworthiness standards will be applied in a non-discriminatory manner.

The amount of unsecured credit will be based on a calculation of the lesser of (i) a percentage of tangible net worth, which is calculated as total net worth less the value of any intangibles assets, or (ii) a maximum unsecured monetary limit which corresponds to the credit rating of the CRES Provider or its guarantor. AEP Ohio's CRES creditworthiness determinations and associated credit limits are reasonable based on industry practice as well as in light of the heightened risk that AEP Ohio bears because it has not transitioned fully to market. Having not transitioned to market, AEP Ohio is confronted by greater risks than those faced by other EDUs that have implemented competitive bid processes and are fully transitioned to market.

Prior to having a competitive bid process, EDUs like Public Service Electric and Gas (PSEG) also used credit matrices similar to the one currently utilized by AEP Ohio. It was only after PSEG implemented a competitive bid process and put in place a mechanism for recovery of amounts owed to it as a result of a CRES Provider default, that PSEG transitioned to the use of a percentage of tangible net worth as the exclusive means to determine a credit limit. PSEG was asked by the New Jersey Board of Public Utilities and intervenors to weaken its matrix so that it would only include tangible net worth requirement *once PSEG's risk had been significantly decreased following its transition to full competition*. In Ohio, FirstEnergy utilities have a fully competitive SSO (including a full competitive bid process for capacity and energy) that includes a separate rider to collect any costs for CRES default. In contrast, AEP Ohio does not have such a rider and it appropriately needs to cover its financial risk directly from CRES Providers through collateral and contractual remedies.

The reasonableness of AEP Ohio's reliance on this two-step approach can be confirmed by looking at the credit matrices used by other Ohio EDUs in their SSO Supplier Agreements. For example, in their Master SSO Supply Agreements used with wholesale suppliers, the FirstEnergy companies (The Cleveland Electric Illuminating Company, The Toledo Edison Company, and Ohio Edison Company) utilize a credit matrix that provides a credit limit *of the lesser of 8% TNW or \$25,000,000* for a supplier or guarantor with a BBB- or Baa3 credit rating from S&P/Fitch or Moody's, respectively; and Duke Energy Ohio extends a maximum credit limit of 8% TNW or \$30,000,000 under similar parameters. (See Exhibits B at pp. 40-41 and C at p. 23). Thus, AEP Ohio's credit limit of the lesser of TNW percentage or a line of credit based on the credit rating is certainly conventional and already in use within the State of Ohio, and AEP Ohio's proposal is more generous than the FirstEnergy companies' credit guidelines.

Although this example is from wholesale contracts, the underlying credit concepts are the same, and are rooted in the need to appropriately manage and limit the overall magnitude of the credit risks which confront utilities from multiple sources.

For energy, having determined a CRES Provider's allowed unsecured credit limit as described above, AEP Ohio will next calculate the amount of an established CRES Provider's collateral requirement by (1) taking the CRES Provider's actual highest monthly energy usage of a rolling twelve (12) month period by on peak and off peak activity, (2) taking 15 days of this activity, (3) multiplying those amounts by the next July forward on peak and off peak index prices, as applicable, based on a generally accepted industry price index for wholesale power delivered to the Company's load zone within the RTO, and (4) subtracting therefrom the amount of the CRES Provider's allowed unsecured credit limit, if any, which is based on credit ratings, performance and tangible net worth of the CRES Provider.

The default exposure to AEP Ohio and the financial security calculation supporting the collateral call relate strictly to the time period between a CRES Provider's default and the date the affected customers either return to SSO service or take service from another CRES Provider. Based on customer notice requirements in AEP Ohio's tariff and the billing cycle, the average time for that default period is approximately 15 days<sup>5</sup> and that is why AEP Ohio's collateral calculation for energy incorporates that period of time.

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<sup>5</sup> The Company's tariff actually requires a 30-day period but the Commission recently approved a waiver for AEP Ohio such that it can return customers to SSO service within 15 days upon a non-delivery default of a CRES Provider. *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 (July 2, 2013 Entry). This waiver should be made permanent as part of deciding this Application, as it reduces AEP Ohio's financial exposure and thus the collateral requirements for CRES Providers.

For capacity, AEP Ohio proposes to use a very similar process. For CRES Providers that do not maintain investment grade credit ratings, AEP Ohio will calculate the amount of an established CRES Provider's collateral requirement by: (1) taking the CRES Provider's peak load contribution data, (2) multiplying that quantity by the applicable RPM price, and (3) multiplying that amount by 90 days of exposure. The key dispute around the capacity collateral amount seems to be the 90 days of financial exposure incorporated into the calculation – but AEP Ohio submits that it is well supported and, in fact, conservative in that it actually tends to under-estimate the actual financial exposure faced by AEP Ohio for a CRES Provider default.

As outlined in more detail in Attachment D, the basic timeline breaks out as follows: 31 days of consumption; 18 days for data gathering, billing of consumption quantity, and payment by the CRES Provider to PJM; 1 day for PJM to notify AEP Ohio of CRES Provider non-payment; 1 day for AEP Ohio to submit a bill directly to CRES Provider, due 10 business days later (14 calendar days); 30 calendar days for dispute resolution; and 15 days<sup>6</sup> for customers to be returned to SSO upon default. That is a total of 110 days – even assuming there are no additional delays based on intervening Commission proceedings or other litigation. Thus, the use of a 90-day financial exposure period for CRES default associated with capacity is conservative and actually under-states AEP Ohio's risk.

If AEP Ohio is to consider reducing the billing interval for capacity through PJM, there will be system changes internal to AEP that need to be investigated and associated costs that need to be recovered. While this is something AEP Ohio is willing to explore during additional discussions with CRES Providers and interested parties in this proceeding, it is not something

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<sup>6</sup> The fifteen (15) days presumes that the Commission permits a shorter period for return to SSO than AEP's current tariff process, and would apply, consistent with the waiver relating to energy default, a shorter time period.

that AEP Ohio can presently commit to in light of these unanswered questions. Of course, this is a temporary issue because AEP Ohio will no longer be an FRR entity as of June 2015. In the interim, perhaps it would shorten the financial exposure period best of all for AEP Ohio to do the billing to CRES Providers directly. As with the prospect of a shortened PJM billing interval, however, the Company would need to further explore the details prior to committing to do so. Until some alternative solution presents itself in this regard as being viable, the present proposal of AEP Ohio to use a 90-day exposure period is reasonable and fully supported.

**IV. The additional tariff proposals in the Application should be approved as being just and reasonable.<sup>7</sup>**

**A. Section 3 (Customer Choice of Competitive Service Provider)**

RESA asks that the Commission reject changes providing that all changes in CRES Provider must occur at the end of the customer's *actual* meter reading *or bill* date. RESA suggests that CRES Providers have no knowledge of when the customer's meter is actually read. Further, RESA is concerned that, since the actual meter read date is not known until after the fact, if the meter is read earlier, it could shorten the timing of CRES Provider enrollment.<sup>8</sup>

AEP Ohio assures RESA that this is not the case. The twelve calendar day notice period is calculated based on the scheduled meter reading date, which is available on the AEP Ohio website. The actual meter reading date is not relevant for the purposes of this calculation; therefore, AEP Ohio could not shorten the notice period by reading the meter ahead of schedule.

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<sup>7</sup> Based on the comments received, as discussed below, AEP Ohio has agreed to make certain additional changes to the Supplier Tariff, which are included in Attachment E. Attachment E also reflects some ministerial changes as well as a revision to Section 13 (Losses) to reflect accurately that, under the PJM market structure, only the Transmission Provider can supply losses.

<sup>8</sup> See RESA Comments at 8.

Furthermore, information regarding the actual meter reading date is provided in transaction set 867 of the electronic data interchange (EDI).

**B. Section 4 (Changing Competitive Service Providers)**

RESA suggests that the charge for each transaction in which a customer authorizes a change in one or more CSPs should be \$5.00 instead of the \$10.00 currently included in this section.<sup>9</sup>

AEP Ohio notes that these changes are being made as part of a separate filing to become effective at the beginning of 2014.

**C. Section 5 (Minimum Stay Requirements)**

RESA argues (at 9) that the minimum stay requirements need to be updated consistent with the orders of the Commission. FES also claims (at 2) that AEP Ohio failed to remove competitive barriers relating to minimum stay and switching fees, pursuant to the ESP II decision. AEP Ohio already made the required compliance filings on March 21, 2013 in the ESP II docket. There was no reason for the Company to duplicate that filing in this docket since it related to the ESP II decision and was a compliance filing in that docket. RESA and FES were served with the Company's ESP II compliance filing and were specifically made aware of it. More importantly, the Company has not failed to implement the ESP II decision and these criticisms are simply wrong.

**D. Section 7 (Transmission Service, RTO Settlements, and Reliability Requirements)**

Several commenters ask for more transparency regarding the capacity obligation methodology, load calculation methodology, and unaccounted for energy (UFE).<sup>10</sup> AEP Ohio

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<sup>9</sup> See RESA Comments at 8; see also FES Comments at 2.

<sup>10</sup> See IEU Comments at 4-7; RESA Comments.

responds that it has developed manuals regarding these calculations, which are available on its website under the menu for AEP Ohio CRES Calculation Processes. AEP Ohio filed a letter on July 16, 2013 in this docket that advised the Commission and parties of the posting of this information and included a copy of the relevant processes.

With respect to the content of the manuals themselves, AEP Ohio assures the parties that its calculation methodologies equitably treat shopping and non-shopping customers. AEP Ohio follows PJM guidelines in the calculation of both energy obligations and customer Peak Load Contributions (PLC), which serve as the basis for both capacity obligations and maximum load that can be offered into demand response programs. AEP Ohio calculates PLCs for both shopping and non-shopping customers in an identical manner, and the PLC and energy calculation processes are, and always have been, reasonable, transparent, and auditable. Although the methods have not previously been posted to the AEP Ohio website, AEP Ohio has always disclosed its calculation methods upon request, and has worked with end-use customers, Competitive Retailers, and Curtailment Service Providers in providing explanation, review, and, when necessary, correction of PLC values. As the energy or PLC calculation methodology may undergo occasional minor adjustments due to PJM, market, or Company initiatives, it is more appropriate to provide the specific methodology by positing it on the AEP website, rather than incorporating it into the Supplier Tariff. This allows AEP Ohio to make necessary modifications to the manuals expeditiously and upload them to the AEP website.

In response to RESA's request, AEP Ohio will post actual, experienced UFE on the AEP website. However, with respect to other requests, such as RESA's request that AEP Ohio ensure the CRES Provider receives credit for actual, net energy consumption, AEP Ohio does not offer any proposed revisions to its Supplier Tariff at this time. AEP Ohio's systems cannot currently

handle negative values; therefore, to provide the CRES Provider credit for any energy its customers push back onto the system would require software modifications to deal with negative energy values. Should standards be developed and accepted by the Commission that differ from current procedures, AEP Ohio will modify its systems to maintain compliance with all specified standards.

Additionally, RESA requests that AEP Ohio send a notice to the CRES Provider prior to sending consumption figures to PJM.<sup>11</sup> AEP Ohio continues to evaluate its processes; however, its tariff remains reasonable as proposed without this modification.

Finally, FES opposes AEP Ohio's proposal that PJM's monthly bills be subject to adjustment for errors in arithmetic, computation, meter readings or other errors after the 60 days provided in the PJM settlement procedure.<sup>12</sup> Contrary to FES's assertions, this provision is necessary and appropriate. Energy-related charges may need to be adjusted outside the 60-day PJM settlement period to ensure their accuracy for a variety of reasons, as described above. In addition, PJM has informed AEP Ohio that it serves only as a billing agent that passes through charges to CRES Providers for demand-related charges, such as capacity and network transmission service, and that any shortfall in collections from CRES Providers would be assessed to AEP Ohio for customers leaving AEP Ohio's SSO service. Consequently, the 60-day settlement procedure should not be binding on AEP Ohio as the only manner in which adjustments may be performed.

#### **E. Section 9 (CRES Provider Registration with the Company)**

RESA argues that EDI testing should be done on an ongoing basis (rather than quarterly) and that AEP Ohio should be required to use commercially reasonable efforts to ensure that EDI

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<sup>11</sup> See RESA Comments at 6.

<sup>12</sup> See FES Comments at 3.

testing is completed within 30 days of a request to initiate testing by a CRES Provider.

According to RESA, the use of quarterly flights “will have a significant chilling effect” on enrollments.<sup>13</sup>

AEP Ohio disagrees with the suggestion that, by utilizing quarterly flights for EDI testing, AEP Ohio has erected a barrier to enrollment of CRES Providers. While some utilities in Ohio may conduct EDI testing on a more frequent basis, other utilities in the industry conduct such testing quarterly, or on an even less frequent basis. Moreover, AEP Ohio notes that it allows CRES Providers to join a quarterly test flight immediately after registration begins. AEP Ohio does not require that all enrollment requirements be satisfied before conducting EDI testing. For example, the EDI testing can be performed before collateral is posted. Consequently, CRES Providers can finalize enrollment requirements simultaneously with the performance of EDI testing, and AEP Ohio’s use of quarterly flights does not unduly delay enrollment.

With respect to the proposed new grounds for rejecting registration, RESA argues that there must be a cure period before a registration can be rejected and that the Supplier Tariff should reflect that it does not alter the right of AEP Ohio and CRES Providers to appeal to the Commission if there is a dispute over registration.<sup>14</sup>

In response to these suggestions by RESA, AEP Ohio notes that alternative dispute resolution is offered under Section 28 of the AEP Ohio Supplier Tariff.<sup>15</sup> Further, with respect to incomplete registration, this section already provides that AEP Ohio will notify the CRES

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<sup>13</sup> See RESA Comments at 12.

<sup>14</sup> See RESA Comments at 13.

<sup>15</sup> The strike out of the alternative dispute resolution provisions in this section identified by RESA reflects the relocation of those provisions to a new section – Section 28. AEP Ohio did not delete those provisions.

Provider of incomplete registration information within ten days of receipt. The proposed grounds for rejection further provide that the CRES Provider will have 30 calendar days after that notice to complete registration. The proposed grounds for rejection, as well as the 30 day cure period for incomplete registration, are modeled after the Ohio Edison Supplier Tariff, which the Commission has already found to be just and reasonable.<sup>16</sup> AEP Ohio should not be required to make available additional cure opportunities beyond those already included in this section.

DERS further argues that this section of the AEP Ohio Supplier Tariff should be expanded to offer a dispute resolution procedure in the event there is a dispute as to whether a CRES Provider is current in its payment of charges owed. AEP Ohio reiterates that alternative dispute resolution procedures are provided in Section 28 of the Supplier Tariff. However, AEP Ohio should not be required to provide services to a CRES Provider where the CRES Provider has refused to pay the amount billed to it. AEP Ohio's proposed language providing that it shall not be required to provide services to a CRES Provider unless the CRES Provider is current in its payments of charges is modeled after Section 4.15 of the Duke Energy Ohio Supplier Tariff, which provides, "The Company shall not be required to provide Certified Supplier Services to a Certified Supplier unless the Certified Supplier is current in its payment of all Charges owed under this Certified Supplier Tariff." The Commission found that provision to be just and reasonable and should reach the same conclusion here with respect to AEP Ohio.

**F. Section 11 (Customer Enrollment Process)**

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<sup>16</sup> See Ohio Edison Supplier Tariff § V.D.

DERS requests that AEP Ohio revise the language in section (a) such that AEP Ohio will provide updates to the Customer Information List monthly, rather than quarterly.<sup>17</sup> AEP Ohio agrees to the change.

DERS also requests that AEP Ohio include on its customer information list the following additional information:

- Maintaining actual load profile even when a customer switches;
- Meter numbers;
- Whether the service address is set to net-metering;
- Update peak load contribution and network service peak load (“NSPL”) values to four digits (or otherwise prevent truncating);
- Provide total loss factor value on the pre-enrollment list;
- Indicate whether the customer has already switched to a CRES provider<sup>18</sup>

AEP Ohio agrees to the suggested additional information. AEP Ohio also notes that it does not currently truncate PLC and NSPL values.

With respect to subsection (d), Government Aggregation Customer Information List, FES requests that AEP Ohio modify the language to provide that AEP Ohio will notify CRES Providers in advance of any proposed changes to the actual format or file containing its Government Aggregation Customer Information List. AEP Ohio agrees to make this change.

#### **G. Section 15 (Meter Data Management Agents)**

RESA requests that AEP Ohio provide numerous additional details in this section.<sup>19</sup>

With respect to RESA’s request that AEP Ohio’s tariff reflect a web-based system that provides access to key customer usage and account data, AEP Ohio notes that it has already committed to develop an electronic system that provides relevant data by May 31, 2014. AEP Ohio should not be required to expedite this process.

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<sup>17</sup> See DERS Comments at 2-3.

<sup>18</sup> See DERS Comments at 3-4.

<sup>19</sup> See RESA Comments at 17.

RESA further contends that AEP Ohio should be required to conduct a CRES input session to identify additional data elements. AEP Ohio notes that it has, in fact, participated in numerous meetings with CRES Providers regarding the customer information that should be available to CRES Providers. In response to this request, AEP Ohio proposes to add the following language to the Supplier Tariff: “The Company may conduct periodic workshops with CRES Providers to solicit input regarding additional data elements that may be appropriate for inclusion in the electronic system used to transmit usage information.”

Regarding RESA’s request that the Supplier Tariff include a list of applicable EDI Standards, AEP Ohio cannot revise the tariff in this manner. EDI Standards change periodically, and AEP Ohio must have the flexibility to apply the standards in effect at a given time. AEP Ohio commits to adhere to any applicable EDI Standards.

Regarding RESA’s request that AEP Ohio modify its Supplier Tariff to reflect that “sync” lists will be provided, AEP Ohio does not intend to revise the tariff in this manner. AEP Ohio does not routinely produce “sync” lists. However, AEP Ohio will provide them on request, consistent with current practice.

With respect to the request that AEP Ohio provide access to customer usage data for customers with Smart Meter, AEP Ohio does not intend and should not be required to do so at this time. At this time, AMI is only a pilot program.

#### **H. Section 17 (Consolidated Billing by the Company)**

RESA would like an option for its customers to select budget billing for both the CRES and distribution charges when they receive a consolidated bill from AEP Ohio.<sup>20</sup> However, AEP

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<sup>20</sup> See RESA Comments at 20.

Ohio does not currently offer budget billing in this manner and should not be required to make changes to its processes to accommodate this request.

With respect to comments that AEP Ohio should not charge for the costs to provide consolidated billing services, AEP Ohio agrees to remove the charge.<sup>21</sup>

DERS and FES argue that AEP Ohio should be required to delete language providing that, at the Company's discretion, any customer receiving Company consolidated billing with a CRES Provider arrearage of more than 60 days may be switched back to Standard Offer Service.<sup>22</sup> However, this paragraph was not revised as part of the instant filing and should not be at issue here. AEP Ohio should not be required to justify, in this forum, the continued existence of this provision when it has been in its tariff for many years.

#### **I. Section 18 (Metering and Load Profiling)**

RESA and others question the requirement that customers with a maximum billing demand of 200 kW or greater install a dedicated analog phone line and be interval metered. AEP Ohio proposes to revise the language to state that such customers must install a dedicated analog phone line, *or other mechanism deemed to be sufficient by the Company to enable interval metering*, and be interval metered.

Regarding the requirement to have metering installed *before* a CRES Provider may serve a customer, AEP Ohio agrees with DERS's proposed language from the Duke Energy Ohio tariff, under which the customer must sign an agreement to have the equipment installed before an enrollment request can be accepted. Accordingly, AEP Ohio proposes to revise this section to state:

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<sup>21</sup> See Border Comments at 4, DERS Comments; FES Comments at 11.

<sup>22</sup> See DERS Comments at 4-5; FES Comments at 11.

If an interval meter is required, the Customer must approve a work order for an interval meter installation before the Company will accept an enrollment DASR. For Customers that will have an interval meter installed for the requested service, service may begin, assuming the Company has an approved work order for the interval meter installation. A Company load profile will be used for settlement. Consumption meter reads will continue to be used for billing. This will be the approach during the period between the Customer's request for an interval meter and the Company's installation of such a meter.

RESA opposes the requirement that AEP Ohio be "held harmless" for actions taken in its agent role in providing hourly load data to PJM.<sup>23</sup> However, this section is nearly identical to that provided in Section 14 of the Duke Energy Ohio tariff, which provides:

#### 14.1. Meter Data Collection

The Company, acting as the designated Meter Data Management Agent for the Certified Supplier, will supply hourly load data to Transmission Provider, for the Certified Supplier. The Company will provide this data in accordance with the OATT, including estimates when necessary. The Company will be held harmless for any actions taken while performing Meter Data Management Agent responsibilities. Meter data collected by the Company shall be used to calculate the quantity of energy actually consumed by a Certified Supplier's End-use Customers for a particular period. Such collection shall occur at the time of an End-use Customer's monthly meter read. Thus, in order to measure the energy consumed by all End-use Customers on a particular day, at least one month is required for data collection. Typically, the Company is able to calculate and provide hourly usage data for a Certified Supplier's load, for a calendar month, forty-five to sixty days after the end of that calendar month. It is the responsibility of the Certified Supplier to understand this process.

The Commission has found the hold harmless requirement to be just and reasonable in the case of Duke Energy Ohio. There is no reason why AEP Ohio should be held to a different standard.

### **J. Section 20 (Liability and Indemnification)**

A number of commenters raise issues with the revised liability limitation provisions. However, in revising these provisions, AEP Ohio sought parity with the other EDUs in Ohio, which contain similar provisions that the Commission has already found to be just and

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<sup>23</sup> See RESA Comments at 23.

reasonable. For example, Section 18 of the Duke Energy Ohio Supplier Tariff includes the following provisions limiting Duke Energy Ohio's liability to CRES Providers:

**18.1. General Limitation on Liability**

The Company shall have no duty or liability with respect to Competitive Retail Electric Service before it is delivered by a Certified Supplier toward an interconnection point with the Transmission Provider's Balancing Authority Area. 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 the End-use Customers receiving Competitive Retail Electric Service as to those receiving electric energy and capacity from the Company.

**18.2. 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 purpose of making repairs, changes, or improvements to any part of its system for the general good of the service or the safety of the public or for the 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 control.

Similarly, Section XX of the Ohio Edison Supplier Tariff provides:

**A. General Limitation on Liability**

The Company shall have no duty or liability with respect to Competitive Retail Electric Service before it is delivered by a Certified Supplier to an interconnection point with the FE Ohio Zone. 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.

**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 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 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 control.

Subparts (a) and (b) of proposed Section 20 of AEP Ohio's Supplier Tariff track Section 18 of the Duke Energy Ohio Supplier Tariff and Section XX of the Ohio Edison Supplier Tariff. The last sentence of subpart (a) of proposed Section 20 of AEP Ohio's Supplier Tariff, limiting liability with respect to consequential damages was also added to be consistent with AEP Ohio's Capacity Payment Agreement.

Subparts (c) and (d) of proposed Section 20 of AEP Ohio's Supplier Tariff also follow the liability limitation provisions in the Ohio Edison Supplier Tariff. Specifically, subsections (C) and (D) of Section XX of the Ohio Edison Supplier Tariff provide:

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

Except as provided in this Tariff, the Company shall have no duty or liability to a Certified Supplier providing Competitive Retail Electric Services arising out of or related to a contract or other relationship between a Certified Supplier and a Customer of the Certified Supplier. The Company shall implement Customer selection of a Certified Supplier consistent with applicable rules of the Commission and shall have no liability to a Certified Supplier providing Competitive Retail Electric Services arising out of or related to switching Certified Suppliers, unless and to the extent that the Company is negligent in switching or failing to switch a Customer.

**D. Commission Approval of Above Tariff Language**

The Commission approval of the above Tariff language in respect to the limitation of liability arising from the Company's negligence 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.

As with other proposed changes to AEP Ohio's Supplier Tariff, the changes to the liability limitations appropriately incorporate the best practices of other utilities in Ohio, whose terms the Commission has already found to be just and reasonable. AEP Ohio should be entitled to the same types of protections as Duke Energy Ohio and Ohio Edison.

**K. Section 23 (Billing Services)**

RESA highlights a sentence in subsection (a) providing “The CRES Provider is responsible for receiving and resolving all customer rate disputes involving charges for services received from the CRES Provider.”<sup>24</sup> RESA asks that language be added in order to allow AEP Ohio to intervene in such disputes, where necessary. AEP Ohio is amenable to this suggestion and therefore proposes to add an additional sentence, which states, “The Company may provide input to customer rate dispute processes to the extent necessary.”

Additionally, in response to comments, AEP Ohio agrees to remove the sentence stating that it may terminate consolidated billing for any reason with 30 days’ notice.<sup>25</sup>

DERS also objects to AEP Ohio’s proposed billing practice “to render bills regularly at monthly intervals, but bills may be rendered more or less frequently at the Company’s option.”<sup>26</sup>

Notably, however, Section 10.2 of the Duke Energy Ohio Supplier Tariff provides:

10.2. Billing Cycle

Current Company practice is to render bills regularly at monthly intervals, but bills may be rendered more or less frequently at the Company’s option. Rate values stated for direct application to regular monthly billing periods will be adjusted when the time elapsed between billings is substantially greater or less than a month.

The Commission has already found this language to be just and reasonable in the context of Duke Energy Ohio’s Supplier Tariff. AEP Ohio should be granted the same flexibility with respect to its billing cycle to render bills outside the monthly interval process, if necessary.

Additionally, Border raises concerns that AEP Ohio may not reimburse CRES Providers quickly enough, given the “at least every two weeks” language. In response, AEP Ohio notes that its intent is to reimburse CRES Providers the following business day. That said, there may

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<sup>24</sup> See RESA Comments at 27.

<sup>25</sup> See FES Comments at 12.

<sup>26</sup> See DERS Comments at 7.

be circumstances in which there is a delay, and this language covers such circumstances, which AEP Ohio does not expect to be common.

With respect to requests to provide special messages or logos,<sup>27</sup> AEP Ohio does not offer those at this time and should not be required to do so.

RESA also explains that there has been a problem with customers who are on budget billing and who then switch to shopping. According to RESA, for the month in which the customer crosses over to service from the CRES Provider, the customer gets an energy bill from the CRES Provider and a budget bill from AEP Ohio that also contains an energy component. While RESA recognizes that the double billing is subsequently trued up, RESA complains that the initial double billing is a cash flow concern and a potential barrier to shopping.<sup>28</sup>

Generally speaking, AEP Ohio currently reviews the customers' budget amounts in time for the customer's first bill with a CRES Provider and reduces them according to the CRES Provider's average distribution billings. However, SSO customers who are on budget may on occasion use more energy than they pay over the year that their budget bill period covers. This amount is referred to as their deferral amount, and comes due in full at each customer's yearly settlement true-up month, which varies from customer to customer. For customers with a large debit deferral that switch, AEP Ohio recalculates the monthly budget amount due, allowing the customer to pay (monthly) the deferral amount in equal portions from the month they switch to their settlement month. As an example, if a customer on budget with a deferral switches in July and its yearly true-up month is December, any deferral amount will be divided by the appropriate number of months and added to the customer's budget bill amount until the customer's settlement month. The concerns posed by RESA have nothing to do with the shopping process,

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<sup>27</sup> See RESA Comments at 28.

<sup>28</sup> See RESA Comments at 6-7.

as the customer would be required to pay these amounts if it switched or stayed on a SSO rate. With that said, if RESA is willing to promote passing these deferred charges on to the supplier as a non-bypassable charge to eliminate any perceived barriers to shopping, AEP Ohio would support that.

RESA further requests that AEP Ohio be required to provide details regarding partial payment application.<sup>29</sup> AEP Ohio will apply any new standards that are developed as a result of the EDI Working Group. However, AEP Ohio does not plan to modify this section at this time.

**L. Section 25 (CRES Provider Billing Terms and Conditions)**

DERS again challenges the current company practice of rendering bills at monthly intervals but more or less frequently at the Company's option.<sup>30</sup> As explained above, the Commission has already found this language to be just and reasonable in the context of Duke Energy Ohio's Supplier Tariff. AEP Ohio should be granted the same flexibility with respect to its billing cycle to render bills outside the monthly interval process, if necessary.

AEP Ohio also reiterates that it should not be required to condition the application of three business day deadline for paying charges on the charges being undisputed.<sup>31</sup> Again, allowing CRES Providers to avoid paying charges based on an alleged dispute provides an incentive to dispute any charges.

**M. Section 26 (Default, Suspension, and Termination of a CRES Provider)**

FES requests modification of subsection (a)(2) of proposed Section 26 of the AEP Ohio Supplier Tariff, which lists the following as one of the events triggering a default: "The CRES Provider fails to fully pay an invoice from the Company within three (3) business days following

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<sup>29</sup> See RESA Comments at 28.

<sup>30</sup> See DERS Comments at 8.

<sup>31</sup> See RESA Comments at 29.

the due date of the invoice.” Specifically, FES suggests that nonpayment should only trigger default if an invoice is undisputed. FES also requests that the payment within three business days be extended to ten days.<sup>32</sup>

AEP Ohio does not agree to the requested modifications. Notably, AEP Ohio modeled the proposed list of events triggering a default after the language in Section 19.1 of the Duke Energy Ohio Tariff, which the Commission found to be just and reasonable. Section 19.1 lists as an event triggering a default, “The Certified Supplier fails to fully pay an invoice from the Company within three business days following the due date of the invoice.” Significantly, the Duke Energy Ohio Tariff does not condition the application of this criterion on the charges being undisputed, and AEP Ohio should not be required to do so either. As explained above, allowing CRES Providers to avoid paying charges based on an alleged dispute provides an incentive to dispute any charges.

Border also requests that conditions be added to the list of event triggering default. Specifically, Border requests that, in order to declare a default based on a CRES Provider’s misuse of “the Company Consolidated and Bill-Ready Billing option by incorrectly using the name of the Company or the name of one of the Company’s affiliates in a charge description or otherwise using this billing option in a misleading or defamatory manner,” AEP Ohio should first be required to submit the issue to the Commission for a ruling.<sup>33</sup> However, that standard was not required for the purposes of the Duke Energy Ohio Supplier Tariff, which included the same language regarding the misuse of the company name. To the extent there is a dispute regarding the application of that criterion, it could be explored with the Commission in the event

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<sup>32</sup> See FES Comments at 13.

<sup>33</sup> See Border Comments at 7.

AEP Ohio seeks to terminate or suspend service, which requires the filing of a notice at the Commission.

Finally, RESA asks that the 10-business-day automatic approval period for Commission action on a notice of suspension or termination be modified to 30 calendar days.<sup>34</sup> However, these timeframes were already found to be just and reasonable by the Commission, as they were not changed as a result of this filing. Moreover, this is consistent with Section 19.2 of the Duke Energy Ohio Supplier Tariff, which the Commission has also found to be just and reasonable.

### **CONCLUSION**

For the foregoing reasons, AEP Ohio respectfully requests that the Commission approve the Application and implement the proposed tariff amendments as soon as possible.

Respectfully submitted,

/s/ Steven T. Nourse

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Counsel for Ohio Power Company

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<sup>34</sup> RESA Comments at 30.

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of Ohio Power Company's *Reply Comments* was served by electronic mail upon the individuals listed below this 22<sup>nd</sup> day of July, 2013.

//s/ Steven T. Nourse  
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# **ATTACHMENT A**

## **CRES Energy Supply Credit Requirements:**

AEP Ohio evaluates the creditworthiness of an Energy Supplier or its Guarantor, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). AEP Ohio also looks at the scope of operations of a CRES Provider and the level of risk it presents to AEP Ohio.

Based upon an evaluation of financial information provided with the registration application, AEP Ohio will determine whether a supplier is creditworthy. If a provider has investment grade ratings from two of the three major credit ratings agencies (Standard & Poor's, Moody's, or Fitch) it may be granted unsecured credit up to a threshold determined by AEP Credit Risk Management. AEP's creditworthiness standards are applied in a non-discriminatory manner.

**Unsecured credit** is established in accordance with the following table taking into account the lesser of:

- the percentage of Tangible Net Worth (Column B), corresponding to a counterparty's Credit Rating (Column A), multiplied by the counterparty's Tangible Net Worth; or
- the Maximum Unsecured Monetary Limit which corresponds to the Counterparty's Credit Rating.

<u>Column A</u> Credit Rating of the CRES or its Guarantor S&P/Moody's/Fitch <sup>1</sup>	<u>Column B:</u> Percentage of Tangible Net Worth	<u>Column C</u> Maximum Unsecured Monetary Limit
A-/A3/A- and above	4%	\$75,000,000
BBB+/Baa1/BBB+	3%	\$50,000,000
BBB/Baa2/BBB	3%	\$40,000,000
BBB-/Baa3/BBB-	2%	\$30,000,000

Tangible Net Worth is calculated as total net worth less the value of any intangibles or assets as determined by Credit Risk Management (ie. and without limitation goodwill, intercompany notes receivables, officer notes receivable, etc.).

## **Summary of Initial Credit Calculation for CRES Energy Supply collateral requirement:**

AEP Ohio calculates a CRES Provider's collateral requirement by multiplying ( fifteen (15) days of the CRES Provider's maximum anticipated peak summer energy usage times the next July forward index price, as established by a generally accepted industry price index for wholesale power delivered to the AEP Ohio's load zone within the RTO, and subtracting therefrom the amount of the CRES Providers's 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 (12) month's history is established. The Collateral requirement is rounded up to the nearest integer multiple of \$1,000.

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<sup>1</sup> If split rated, the lowest rating will be used.

### **Summary of Ongoing Credit Calculation for CRES Energy Supply Collateral Requirement:**

On an ongoing monthly basis, AEP Ohio will calculate the amount of the CRES Provider's collateral requirement by taking the CRES Provider's actual highest monthly energy usage on a rolling twelve (12) month period by on peak and off peak activity, taking fifteen (15) days<sup>2</sup> of this activity and multiplying those amounts by the next July forward on peak and off peak index prices, respectively, based on a generally accepted industry price index for wholesale power delivered to the Company's load zone within the RTO<sup>3</sup>, and subtracting therefrom the amount of the CRES Provider's allowed unsecured credit limit. The collateral requirement shall be rounded up to the nearest integer multiple of \$1,000. AEP Ohio will monitor collateral requirements and credit exposure. Any CRES Provider's whose credit exposure exceeds its credit limit will be required to provide additional collateral within three (3) business days of AEP Ohio's request.

A CRES Provider's credit may be evaluated by AEP Ohio from time to time as warranted by changes in circumstance. Unanticipated market movements, demands, and economics may cause a CRES Provider's exposures to exceed prescribed credit limits or collateral originally in place. Additional collateral may be required due to a degradation of credit rating or repayment ability of a CRES Provider.

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<sup>2</sup> AEP Ohio is using fifteen (15) days based on a continuation of the recent tariff waiver granted by the Commission in Case No. 13-1427-EL-UNC.

<sup>3</sup> AEP Ohio reserves the right to modify or change the prices used in the calculation, but AEP Ohio will initially use the ICE cleared futures for July 2013 AD HUB RT peak futures contract MSO times the CRES Provider's peak usage and use the ICE cleared futures for July 2013 AD HUB RT Off-peak futures contract ADO multiplied by the CRES Provider's off peak usage.

# **ATTACHMENT B**

**ATTACHMENT A-1**  
**MASTER STANDARD SERVICE OFFER (“SSO”)**  
**SUPPLY AGREEMENT**  
**BETWEEN**  
**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**  
**THE TOLEDO EDISON COMPANY**  
**OHIO EDISON COMPANY**  
**AND**  
**AEP ENERGY PARTNERS, INC.**

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## **MASTER SSO SUPPLY AGREEMENT**

**THIS MASTER SSO SUPPLY AGREEMENT** (this “Agreement”) made and entered into this 25<sup>th</sup> day of January, 2013 (the “Effective Date”) by and between The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company (collectively, the “Companies”), each of which is a corporation organized and existing under the laws of the State of Ohio, and each of the suppliers listed on Appendix A severally, but not jointly (each an “SSO Supplier” and, collectively, the “SSO Suppliers”). The Companies and each SSO Supplier are hereinafter sometimes referred to collectively as the “Parties,” or individually as a “Party.”

### **WITNESSETH:**

**WHEREAS**, each of the Companies is an Ohio public utility engaged, inter alia, in providing SSO Service within its service territory; and

**WHEREAS**, the PUCO found that, commencing on and after June 1, 2011, it would serve the public interest for the Companies to secure SSO Supply through a competitive bidding process; and

**WHEREAS**, on January 22, 2013, the Companies conducted and completed a successful Solicitation for SSO Supply; and

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

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

**WHEREAS**, each SSO Supplier will satisfy its Capacity obligations under the PJM Agreements associated with its respective SSO Supplier Responsibility Share in accordance with the terms and provisions of the PJM Agreements, including through participation in the base residual auction and incremental auctions administered by PJM; and

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

**NOW, THEREFORE**, in consideration of 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**

Any capitalized or abbreviated term not elsewhere defined in this Agreement will have the definition set forth in this Article.

**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.

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

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

**Bankrupt** means, with respect to any entity, that such entity (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (ii) makes an assignment or any general arrangement for the benefit of its creditors; (iii) otherwise becomes insolvent, however evidenced; (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (v) is generally unable to pay its debts as they become due.

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

**Billing Month** means each calendar month during the Delivery Period.

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

**Charge** means any fee, charge, PJM charge, the PMEA/FMEA Adjustment if in favor of the Companies, or any other amount that is billable by the Companies to the SSO Supplier under this Agreement.

**Commercial Customer** means a Customer taking service under one of the Companies' General Service – Small Tariffs.

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

**Credit Limit** means an amount of credit, based on the creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 6.6, granted by the Companies to such SSO Supplier to be applied towards the Total Exposure Amount for such SSO Supplier.

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

**Customer** means any Person who receives distribution service from the Companies in accordance with the Applicable Legal Authorities.

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

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

**Defaulting Party** has the meaning set forth in Section 5.1.

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

**Delivery Point** means the FE Ohio Aggregate as defined within PJM.

**Early Termination** has the meaning set forth in Section 4.4.

**Early Termination Date** means, as between the Companies and the applicable SSO Supplier, the date upon which an Early Termination becomes effective as specified in Section 5.2(b).

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

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

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

**Energy** means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

**Event of Default** has the meaning set forth in Section 5.1.

**Excess Collateral** has the meaning set forth in Section 6.7.

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

**FERC** means the Federal Energy Regulatory Commission, or any successor thereto.

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

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

**FPA** has the meaning set forth in Section 10.3.

**First Mortgage Bond** – has the meaning ascribed in Section 6.9(c) of this Agreement.

**Forward Market Prices** means forward market prices for a specific geographic Market Price Hub.

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

**Generator Attribute Tracking System** or **GATS** means the system owned and operated by PJM Environmental Services, Inc. to provide environmental and emissions attributes reporting and tracking to its subscribers to meet the information disclosure requirements of states that have renewable portfolio standard requirements.

**General Service – Small Tariffs** means Rate Schedules GS, GP, STL, TRF and POL of the Companies' Tariffs for Electric Service.

**General Service – Large Tariffs** means Rate Schedules GSU and GT of the Companies' Tariffs for Electric Service.

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

**Guaranty** means the ICT Guaranty or the Total Exposure Amount Guaranty, as applicable.

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

**ICR Collateral** has the meaning set forth in Section 6.4(d).

**ICRT** has the meaning set forth in Section 6.3.

**ICT Guaranty** means a guaranty, in the form substantially set forth in Appendix E, provided by a Guarantor in favor of the Companies guaranteeing an SSO Supplier's financial obligations in connection with ICT.

**Indemnified Supplier** has the meaning set forth in Section 12.1(b).

**Independent Credit Requirement** or **ICR** means an amount per Tranche required as security under Section 6.3, to mitigate the risk to the Companies of Energy price movements between the date of an Early Termination caused by an Event of Default by an SSO Supplier and the date the final calculation of Default Damages owing to the Companies under Section 5.2(c) is made.

**Independent Credit Threshold** or **ICT** means an amount of credit, based on the

creditworthiness of an SSO Supplier or its Guarantor, if applicable, determined pursuant to Section 6.4, granted by the Companies to such SSO Supplier to be applied towards the satisfaction of such SSO Supplier's Independent Credit Requirement.

**Industrial Customer** means a Customer taking service under one of the Companies' General Service – GSU and GT Tariffs.

**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/>.

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

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

**Letter of Credit** means a standby irrevocable letter of credit acceptable to the Companies 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 D and including all of the requirements specifically set forth in Section 6.9(b).

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

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

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

**Margin Call** has the meaning set forth in Section 6.6(d).

**Margin Collateral** has the meaning set forth in Section 6.6(d).

**Mark-to-Market Exposure Amount** means an amount calculated daily for each SSO Supplier reflecting the exposure to the Companies due to fluctuations in market prices for Energy as set forth in Section 6.5, minus amounts due to such SSO Supplier pursuant to Section 8.1.

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

**Megawatt or MW** means one thousand kilowatts.

**Megawatt-hour or MWh** means one megawatt of electric power used over a period of one hour.

**Minimum Margin Threshold** means \$250,000.

**Minimum Rating** means a minimum senior unsecured debt rating as defined in Section 6.4(a)(i) of this Agreement.

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

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

**Non-Defaulting Party** means (i) where an SSO Supplier is the Defaulting Party, each of the Companies; (ii) where any of the Companies is the Defaulting Party with respect to an Event of Default, the SSO Supplier to which the applicable obligation was owed.

**Ohio Sales and Use Taxes** has the meaning set forth in Section 13.8.

**Original Delivery Period** has the meaning set forth in Appendix A.

**Other SSO Supply Agreement** has the meaning set forth in Section 5.3(c).

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

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

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

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

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

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

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

**PJM Operating Agreement** means the Amended and Restated Operating Agreement of

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

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

**PMEA or Preliminary Monthly Energy Allocation** means a quantity of Energy expressed in MWh which, for any Billing Month, is the preliminary calculation of the SSO Supplier's SSO Supplier Responsibility Share.

**PMEA/FMEA Adjustment** means, for any Billing Month, the monetary amount due to an SSO Supplier or the Companies, as the case may be, in order to reconcile any difference between the PMEA used for the purpose of calculating estimated payments made to such SSO Supplier for a given month and the FMEA used for calculating the final payments due to the SSO Supplier for such month, as more fully described in Article 8.

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

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

**Residential Customer** means a Customer taking service under any of the Companies' Residential Tariffs.

**Residential Tariff** means Rate Schedule RS.

**Seasonal Billing Factor** means a numerical factor, as set forth in Appendix B, one amount applicable during the summer months of June through August, and one amount applicable during the non-summer months of September through May, applied to the Price in accordance with the provisions of Article 8 and thereby used to adjust the Companies' payments to SSO Suppliers.

**Settlement Amount** means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination, calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and other components of SSO Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be deemed to be those quantities that were delivered on an hourly basis, or would have been delivered on an hourly basis had this Agreement been in effect, during the previous calendar year, adjusted for any SSO Load changes as may have occurred since the previous calendar year as determined by the Companies. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages

calculated pursuant to Section 5.2(b).

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

**SSO Customers** means Residential Customers, Commercial Customers and Industrial Customers, including special contract (SC) Customers, taking SSO Supply from the Companies during the Delivery Period.

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

**SSO Service** means Standard Service Offer service that is not provided by a CRES Supplier and excludes the load of customers served via the Percentage of Income Payment Plan ("PIPP").

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

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

**SSO Supply** means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by the Companies pursuant to Section 2.3, all transmission and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that an SSO Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of SSO Service.

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

**Statement** has the meaning set forth in Section 8.1(a).

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

**Taxes** have the meaning set forth in Section 13.8.

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

**Termination Payment** has the meaning set forth in Section 5.3(c).

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

**Total Exposure Amount Guaranty** means a guaranty, in substantially similar form as set forth in Appendix E, provided by a Guarantor in favor of the Companies guaranteeing an SSO Supplier’s financial obligation with respect to its Total Exposure Amount.

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

**UCC** means the Uniform Commercial Code.

## **ARTICLE 2: GENERAL TERMS AND CONDITIONS**

### **2.1 SSO Supplier's Obligations to Provide SSO Supply**

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

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

(b) (i) except with respect to Capacity, each SSO Supplier's obligation under Sections 2.1(a) will result in physical delivery and not financial settlement; (ii) the quantity of SSO Supply that such SSO Supplier must deliver will be determined by the requirements of the SSO Load, which may be different than the amount indicated in the Solicitation; and (iii) this Agreement does not provide for an option by such SSO Supplier with respect to the quantity of SSO Supply to be delivered; and

(c) each SSO Supplier shall deliver SSO Supply to the Delivery Point under this Agreement free and clear of any and all liens, security interests, claims and encumbrances or any interest therein or thereto by any Person.

### **2.2 Companies' Obligation to Take SSO Supply**

During the Delivery Period, the Companies shall purchase and accept SSO Supply provided by an SSO Supplier pursuant to Section 2.1.

### **2.3 Firm Transmission Service and other Transmission Charges**

The Companies shall be responsible for the provision of Firm Transmission Service from the Delivery Point. In addition, the Companies shall be responsible, at their sole cost and expense, for (i) charges and credits assessed under Schedule 1 (Scheduling,

System Control and Dispatch Service), Schedule 1A (Transmission Owner Scheduling, System Control and Dispatch Services), Schedule 2 (Reactive Supply and Voltage Control from Generation or Other Sources Services), "Network Integration Transmission Service (NITS)" under the PJM Agreements, Schedule 11 (Transitional Market Expansion Charge), Schedule 12 (Transmission Enhancement Charge) and Generation Deactivation Charge of the PJM Tariff, and (ii) Midwest ISO Transmission Expansion Plan (MTEP) charges assessed under Schedule 26 of the Midwest ISO Tariff, whether assessed directly by the Midwest Independent Transmission System Operator, Inc., PJM or American Transmission Systems, Incorporated, and (iii) other non-market-based costs, fees or charges imposed on or charged to the Companies by FERC or a regional transmission organization, independent transmission operator, or similar organization approved by FERC. The Companies shall have such responsibility regarding such services and schedules as they may be modified or superseded from time to time. Each SSO Supplier shall be responsible for all other costs and expenses related to transmission and Ancillary Services in connection with the provision of SSO Supply in proportion to its SSO Supplier Responsibility Share. PJM billing statement line items are set forth in Appendix G.

#### **2.4 Other Changes in PJM Charges**

Each SSO Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing during the Term.

#### **2.5 Congestion and Congestion Management**

Each SSO Supplier is responsible for any congestion costs incurred to supply its SSO Supplier Responsibility Share.

**2.6 Record Retention**

The Companies will retain for a period of two (2) years following the expiration of the Term necessary records so as to permit the SSO Suppliers to confirm the validity of payments due to the SSO Suppliers hereunder; provided that, if an SSO Supplier has provided notice within two (2) years of the expiration of the Term that it disputes the validity of any payments, the Companies agree that they will retain all records related to such dispute until the dispute is resolved pursuant to Article 10.

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

**2.7 PJM E-Accounts**

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

**2.8 Reliability Guidelines**

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

**2.9 PJM Membership**

(a) Each SSO Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM; (ii) qualified by PJM as a “Market Buyer” and

“Market Seller” pursuant to the PJM Agreements, and (iii) qualified as a PJM “Load Serving Entity.” During the Delivery Period, each of the Companies shall be a member in good standing of PJM.

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

#### **2.10 Declaration of Authority**

The Companies and each SSO Supplier shall have executed the Declaration of Authority in the form attached hereto as Appendix F.

#### **2.11 Regulatory Authorizations**

(a) The Companies and each SSO Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement, and with respect to SSO Suppliers only, each SSO Supplier shall have and maintain, throughout the Delivery Period, FERC authorization to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM.

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

#### **2.12 Retail Distribution**

The Companies will be responsible for (i) metering, billing and delivery with respect to SSO Customers (and SSO Suppliers will have no responsibility with respect thereto) and (ii) distribution services (and SSO Suppliers will have no responsibility with respect thereto).

**2.13 PJM Member Default Cost Allocation**

In the event PJM imposes a Default Allocation Assessment upon any of the Companies relating to a default during the Term, the Companies may, in their sole discretion, invoice each SSO Supplier, based on its SSO Supplier Responsibility Share, for amounts determined, in the Companies' sole discretion, to be properly payable by such SSO Supplier from the Default Allocation Assessment and each SSO Supplier shall pay such amounts within three (3) Business Days after receipt of such invoice, subject to the dispute resolution procedures set forth in Section 8.1(f).

**2.14 Status of SSO Supplier**

In order to meet the Companies' service obligations under Applicable Legal Authorities, it is the intent of the Parties that each SSO Supplier shall be deemed a Load Serving Entity for the duration of the Delivery Period pursuant to the PJM Agreements and Applicable Legal Authorities.

**2.15 Sales for Resale**

All SSO Supply provided by an SSO Supplier to the Companies shall be sales for resale, with the Companies reselling such SSO Supply to SSO Customers.

**ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

**3.1 SSO Supplier's Representations and Warranties**

Each SSO Supplier hereby represents and warrants to the Companies as follows:

(a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and, if organized outside the State of Ohio, is duly registered and authorized to do business and is in good standing in the State of Ohio;

(b) it has all requisite power and authority to execute and deliver this Agreement, to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder, including the satisfaction of all applicable PUCO, FERC and PJM requirements;

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

(d) this Agreement is the legal, valid and binding obligation of such SSO Supplier, enforceable in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

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

(f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(g) it is not relying upon the advice or recommendations of any other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and no other Party is acting as a fiduciary for or advisor to it in respect of this Agreement;

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

(i) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code;

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

(k) as of the commencement of the Original Delivery Period, it is (i) a member in good standing of PJM; (ii) qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements and (iii) qualified as a PJM “Load Serving Entity;”

(l) as of the commencement of the Original Delivery Period, it has duly executed the Declaration of Authority in the form attached hereto as Appendix F, which is in full force and effect; and

(m) as of the commencement of the Original Delivery Period, it has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM.

### **3.2 Companies' Representations and Warranties**

Each of the Companies hereby represents and warrants to the SSO Suppliers as follows:

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

(b) it has all requisite power and authority to carry on the business to be conducted by it under this Agreement and to enter into and perform its obligations hereunder;

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

(d) this Agreement is the legal, valid and binding obligation of the Company, enforceable in accordance with its terms, except insofar as such enforcement may be affected by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally;

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

(f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

(g) it is not relying upon the advice or recommendations of any other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement, and no other Party is acting as a fiduciary for or advisor to it in respect of this Agreement;

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

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

### **3.3 Notice**

If a Party becomes aware that any of the representations, warranties, or covenants in this Agreement are no longer true during the Term, such Party must immediately notify the other Parties in accordance with the notice provisions of Section 13.1, provided that if the notifying Party is an SSO Supplier, the SSO Supplier does not have to notify any other SSO Supplier.

**ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT**

**4.1 Term**

The term of this Agreement will commence upon the Effective Date and continue through the end of the Delivery Period (the “Term”); provided, however, that the provision of SSO Supply by SSO Suppliers will commence on June 1, 2013 at 12:00:01 a.m. prevailing Eastern Time.

**4.2 Effect of Termination on Obligations; Survival**

Termination of this Agreement, including Early Termination as between the Companies and an SSO Supplier for any reason, shall not relieve the Companies or such SSO Supplier of any obligation accruing on or prior to such termination. Any termination of this Agreement, including Early Termination, as between the Companies and an SSO Supplier, shall not relieve or otherwise affect the Companies or other SSO Suppliers with respect to their other obligations under this Agreement, absent a written agreement to the contrary among the remaining parties. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement shall so survive, including Articles 5, 10, 11, 12 and 13 and Sections 2.6, 6.8, 6.11, 8.1(d) and (h), in accordance with the terms thereof.

**4.3 Mutual Termination**

The Companies and any SSO Supplier may agree at any time during the Term to terminate their respective rights and obligations hereunder on such terms and under such conditions as they mutually deem to be appropriate as set forth in a mutual termination agreement acceptable in form and substance to the Companies and such SSO Supplier.

**4.4 Early Termination**

This Agreement may be terminated as between the Companies and an SSO Supplier prior to the end of the Term due to the occurrence of an Event of Default and the declaration of an Early Termination Date by the Non-Defaulting Party pursuant to Section 5.2 (an “Early Termination”).

## **ARTICLE 5: BREACH AND DEFAULT**

### **5.1 Events of Default**

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

(a) the failure of the Defaulting Party to make, when due, any payment required pursuant to this Agreement (including under Section 8.2(b)) if such failure is not remedied within one (1) Business Day after receipt of written notice of non-payment;

(b) with respect to an SSO Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to any of the Companies, the failure of the Defaulting Party to return Excess Collateral, in each case pursuant to Section 6.7;

(c) failure of the Defaulting Party to comply with its obligations pursuant to Article 6 (except to the extent constituting a separate Event of Default under Section 5.1(b)) if such failure is not remedied within three (3) Business Days of such failure;

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

(e) the failure of the Defaulting Party to comply with the requirements of Sections 2.9 and 2.11 if such failure is not remedied within three (3) Business Days of such failure;

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

(g) the failure of the Defaulting Party to perform any material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;

(h) the Defaulting Party becomes Bankrupt;

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

(j) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of the Defaulting Party or its Guarantor, if applicable, under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than five percent (5%) of such Defaulting Party's or Guarantor's (as the case may be) TNW, which results in such indebtedness becoming immediately due and payable; (ii) a default by the Defaulting Party or its Guarantor, if applicable, in making on the due date therefor one or more payments in respect of any obligation under contract or at law, individually or collectively, in an aggregate amount of not less than five percent (5%) of such Defaulting Party's or Guarantor's (as the case may be) TNW; or (iii) a default, event of default or other similar condition or event by the Defaulting Party under any Other SSO Supply Agreement or by its Guarantor under any guaranty with respect to any Other SSO Supply Agreement; and

(k) with respect to a Defaulting Party's Guarantor, if any, (i) any representation or warranty made by such Guarantor in connection with this Agreement or any related Guaranty is intentionally or unintentionally false or misleading in any

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

## **5.2 Rights Upon an Event of Default**

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

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 5.1(a) or (h);

(b) declare an Early Termination and designate by written notice an Early Termination Date which shall be no earlier than the day such designation notice is effective and no later than twenty (20) calendar days after such notice is effective; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may only declare on Early Termination if the default of the Defaulting Party constitutes an Event of Default under Sections 5.1(a) or (h);

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

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

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

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

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

(a) **Default Damages.** Subject to Section 5.3(e), the Defaulting Party shall pay Default Damages on or before three (3) Business Days after receipt of an invoice therefor. The invoice shall include a written statement explaining in reasonable detail the calculation of such amount. Neither Party will be liable for Default Damages if this Agreement is terminated by a Governmental Authority.

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 5.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii)

withhold any payments due to the Defaulting Party under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the Defaulting Party's obligations under the Agreement.

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

Non-Defaulting Party as appropriate; provided, however, that if an SSO Supplier is the Defaulting Party and the Termination Payment is due to such SSO Supplier, the Companies will be entitled to retain a reasonable portion of the Termination Payment, which may be equal to the entire amount of the Termination Payment, as security for additional amounts that may be determined to be due and owing by such SSO Supplier as Default Damages; and further provided that any previously attached security interest of the Companies in such retained amounts will continue. If the Termination Payment has been retained by the Companies as security for additional amounts that may be determined to be due and owing by the SSO Supplier, and if, upon making a final determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the SSO Supplier, the Companies will pay simple interest on the Termination Payment amount being made to the SSO Supplier for the period of such retention. Simple interest will be calculated at the lower of the Interest Index or six percent (6%) per annum.

(d) **Notice of Termination Payment.** As soon as practicable after calculation of the Termination Payment, notice must be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. Subject to Section 5.3(e), the Termination Payment must be made by the Party that owes it within three (3) Business Days after such notice is received by the Defaulting Party.

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default

Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Any dispute under this Section 5.3(e) shall be subject to the dispute resolution procedures in Article 10; provided, however, that if the Default Damages or Termination Payment is due from the Defaulting Party, the Defaulting Party must first provide commercially reasonable financial assurances to the Non-Defaulting Party in an amount equal to the Default Damages or Termination Payment, as the case may be.

#### **5.4 Step-up Provision**

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by the Companies with respect to such SSO Supplier, then the Companies, subject to Applicable Legal Authorities, may offer one or more of the non-defaulting SSO Suppliers the right to assume under this Agreement additional Tranches of SSO Load, subject to further compliance with the creditworthiness provisions of Article 6. The provision of any such offer by the Companies to non-defaulting SSO Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by an SSO Supplier of additional Tranches hereunder, such SSO Supplier and the Companies shall execute an amendment to this Agreement modifying Appendix A to reflect the revised SSO Supplier Responsibility Share of the non-defaulting SSO Supplier accepting such offer. An SSO Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume additional Tranches upon the default of another

SSO Supplier.

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

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

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

The rights of the Non-Defaulting Party under this Agreement, including Sections 5.2, 5.3 and 5.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

**ARTICLE 6: CREDITWORTHINESS; PERFORMANCE ASSURANCE****6.1 Applicability**

Each SSO Supplier agrees that it will meet the creditworthiness standards of this Article 6 at all times during the Term and will inform the Companies immediately of any changes in its credit rating or financial condition. Without limiting the foregoing, each SSO Supplier shall, upon the written request of the Companies, affirmatively demonstrate to the Companies in a manner satisfactory to the Companies its compliance with the creditworthiness standards set forth hereunder. The Companies may establish less restrictive creditworthiness standards under this Article 6 in a non-discriminatory manner.

**6.2 Creditworthiness Determination**

The Companies will determine the creditworthiness of an SSO Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate issuer rating). The Companies will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. The Companies may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time, including whenever they become aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition the Companies to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by the Companies of its or its Guarantor's creditworthiness. The Companies' credit

re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30) days after receiving a fully documented request. The Companies shall provide the rationale for their determination of the credit limit and any resulting security requirement and such determination shall be deemed final and conclusive. The Companies shall perform their credit re-evaluation and associated security calculation in a non-discriminatory manner. Each SSO Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, the Companies may specify other types of financial statements that will be accepted. If the Companies determine in their sole discretion that they are unable to adequately assess an SSO Supplier's or Guarantor's creditworthiness or the credit rating of an SSO Supplier or its Guarantor is insufficient, such SSO Supplier shall be required to post ICR Collateral in accordance with Section 6.4 and Margin Collateral in accordance with Section 6.7.

### **6.3 Independent Credit Requirement**

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of each SSO Supplier under this Agreement will initially be \$[ ]<sup>1</sup> million per Tranche and will decline throughout the Term in accordance with the schedule set forth on Appendix C-1. The ICR under this Agreement for each SSO Supplier is the ICRT times the number of Tranches shown in Appendix A.

### **6.4 Independent Credit Threshold**

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

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<sup>1</sup> \$1.0 for 12 Month Procurement; \$1.5 for 24 Month Procurement; and \$2.5 for 36 Month Procurement.

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

(i) the SSO Supplier must (1) be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch"), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) of at least "BB-" from S&P, "Ba3" from Moody's or "BB-" from Fitch (a "Minimum Rating"). If the SSO Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the SSO Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the SSO Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of SSO Supply, then the SSO Supplier and the Affiliate(s) will proportionally share the maximum level of the ICT using the highest rating as determined for each the SSO Supplier and the Affiliate(s). The maximum level of the ICT will be determined based on the following table:

Credit Rating of the SSO Supplier			Maximum Independent Credit Threshold
S&P	Moody's	Fitch	Percentage of TNW
BBB+ and above	Baa1 and above	BBB+ and above	16%
BBB	Baa2	BBB	10%
BBB-	Baa3	BBB-	8%
BB+	Ba1	BB+	2%
BB	Ba2	BB	1%
BB-	Ba3	BB-	0.5%
Below BB-	Below Ba3	Below BB-	0%

(ii) for SSO Suppliers having a Guarantor, the Guarantor must (1) be rated by at least one of the following rating agencies: S&P, Moody's, or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the SSO Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of SSO Supply, then the Guarantor of the SSO Supplier and the Affiliate(s) will proportionally share the maximum level of the ICT using the highest rating as determined for each the Guarantor and the Affiliate(s). The maximum level of the ICT that can be granted based on an ICT Guaranty will be determined based on the following table:

Credit Rating of the Guarantor			Maximum Independent Credit Threshold
S&P	Moody's	Fitch	Percentage of TNW
BBB+ and above	Baa1 and above	BBB+ and above	16%
BBB	Baa2	BBB	10%
BBB-	Baa3	BBB-	8%
BB+	Ba1	BB+	2%
BB	Ba2	BB	1%
BB-	Ba3	BB-	0.5%
Below BB-	Below Ba3	Below BB-	0%

The SSO Supplier will be granted an ICT up to the amount of the ICT Guaranty but not exceeding the maximum ICT shown in the table above. If an ICT Guaranty is provided for an unlimited amount, the SSO Supplier will be granted an ICT up to the maximum ICT shown in the table above. The ICT Guaranty tendered by the SSO Supplier to satisfy the ICT requirement arising under this Section 6.4 shall be a separate guaranty from the Total Exposure Amount Guaranty, if any, tendered by the SSO Supplier to satisfy any requirement for a Credit Limit to cover the Total Exposure Amount arising under Section 6.6; provided, however, that a single Guaranty may be provided if such Guaranty is for an unlimited amount.

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

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

(ii) the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide the Companies with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. The Companies may reject such Guarantors that do not meet the creditworthiness requirements.

(c) All SSO Suppliers or Guarantors of SSO Suppliers that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 6.4, supply the following to the Companies as a condition of being granted an ICT:

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

liability or recourse to the SSO Supplier, to evaluate the sufficiency of the documents submitted by the SSO Supplier; or

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

The Companies will have full discretion, without liability or recourse to the Guarantor or the SSO Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) SSO Suppliers who do not qualify for an ICT or whose ICT plus the amount of any cash or Letter of Credit already posted in accordance with Section 6.9 to satisfy its aggregate ICR under this Agreement and any Other SSO Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other SSO Supply Agreement, must post ICR Collateral at the time of or prior to the

Effective Date to the extent its aggregate ICR under this Agreement and any Other SSO Supply Agreement exceeds its ICT.

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

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. The “mark” for each Billing Month will be determined at the time the Solicitation is completed based on the then prevailing Forward Market Prices. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each SSO Supplier shall be equal to zero. Subsequently, the differences between the prevailing Forward Market Prices on a valuation date and the “mark” prices will be used to calculate the Mark-to-Market Exposure Amounts for each SSO Supplier. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Month during the Original Delivery Period limited to a rolling forward 24 month period starting from this Agreement's Effective Date, as applicable. Forward Market Prices will be determined by publicly available market quotations obtained by the Companies; provided, however, if such quotations are not publicly available, Forward Market Prices will be determined by the Companies using any method which the Companies deem appropriate and which reasonably reflects forward market pricing conditions in PJM. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Appendix C-2, including, but without limiting the preceding sentence, a methodology the Companies expect to use to derive off-peak Forward Market Prices.

## 6.6 Credit Limit

The following criteria constitute the Companies' creditworthiness requirements for the SSO Suppliers to cover the Total Exposure Amount:

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

Credit Rating of the SSO Supplier			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
BBB+ and above	Baa1 and above	BBB+ and above	16%	\$75,000,000
BBB	Baa2	BBB	10%	\$50,000,000
BBB-	Baa3	BBB-	8%	\$25,000,000
BB+	Ba1	BB+	2%	\$10,000,000
BB	Ba2	BB	1%	\$5,000,000
BB-	Ba3	BB-	0.5%	\$5,000,000
Below BB-	Below Ba3	Below BB-	0%	\$0

The SSO Supplier will be required to post cash, letter of credit in an acceptable form as defined in Section 6.9(b) below (see standard format in Appendix D), or First Mortgage Bonds delivered or pledged as provided for in Section 6.9(c) below for the Margin due the Company as set forth in Section 6.7 of this Agreement; or

(b) for SSO Suppliers delivering a Total Exposure Amount Guaranty, in the case of a Guarantor organized under the laws of the United States, the Guarantor providing the Total Exposure Amount Guaranty must (1) be rated by at least one of the following rating agencies: S&P, Moody's, or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. If the SSO Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of SSO Supply, then the Guarantor of the SSO Supplier and the Affiliate(s) will

proportionally share the maximum level of the Credit Limit using the highest rating as determined for each the Guarantor and the Affiliate(s). The maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total Exposure Amount Guaranty will be determined based on the following table:

Credit Rating of the Guarantor			Maximum Credit Limit (calculated as the lesser of the percentage of TNW and the Credit Limit Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Credit Limit Cap
BBB+ and above	Baa1 and above	BBB+ and above	16%	\$75,000,000
BBB	Baa2	BBB	10%	\$50,000,000
BBB-	Baa3	BBB-	8%	\$25,000,000
BB+	Ba1	BB+	2%	\$10,000,000
BB	Ba2	BB	1%	\$5,000,000
BB-	Ba3	BB-	0.5%	\$5,000,000
Below BB-	Below Ba3	Below BB-	0%	\$0

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

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

(ii) if the SSO Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide the Companies with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. The Companies may reject Total

Exposure Amount Guaranties from Guarantors that do not meet the creditworthiness requirements.

(d) All SSO Suppliers or Guarantors of SSO Suppliers, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 6.6, supply the following to the Companies:

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

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

For an SSO Supplier with a Total Exposure Amount Guaranty, the SSO Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to the Companies on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to the Companies during the Term. The SSO Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing

its applicable Credit Limit during the time period after the Companies have made a demand of the SSO Supplier to cover Margin (a “Margin Call”) but before the SSO Supplier has provided the Companies with cash credited to a deposit account of the Companies or a Letter of Credit in accordance with Section 6.9, in each case in an amount equal to the Margin (the “Margin Collateral”). Notwithstanding anything herein to contrary, the SSO Supplier may increase the limit of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon the Companies’ receipt of an amended or substitute Total Exposure Amount Guaranty increasing the limit of the Total Exposure Amount Guaranty, the SSO Supplier may request a return of Margin Collateral in accordance with Section 6.7. The SSO Suppliers will be required to post cash, letter of credit in an acceptable form as defined in Section 6.9(b) below (see standard format in Appendix D), or First Mortgage Bonds delivered or pledged as provided for in Section 6.9(c) below for the Margin due the Companies as set forth in Section 6.7 of this Agreement; or

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

#### **6.7 Posting Margin Collateral and Return of Excess Collateral**

If at any time and from time to time during the Delivery Period, Margin exists with respect to an SSO Supplier, then the Companies on any Business Day may make a Margin Call of such SSO Supplier; provided however that the Companies may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable SSO Supplier shall provide to the Companies Margin

Collateral, which shall comprise of cash, a Letter of Credit, or First Mortgage Bonds delivered or pledged as provided for in Section 6.9(c) below. The Margin Collateral shall be in an amount equal to the Margin less the amount of any Margin Collateral already posted by the SSO Supplier in which the Companies have a first priority, perfected security interest to secure the obligations of the SSO Supplier under this Agreement and any Other SSO Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 6.4 shall not constitute Margin Collateral.

If an SSO Supplier receives a Margin Call from the Companies by 1:00 p.m. prevailing Eastern Time on a Business Day, then such SSO Supplier shall post Margin Collateral the following Business Day if posting cash and the second Business Day following the Margin Call if posting a Letter of Credit or, with respect to Surplus Margin only, delivering or pledging First Mortgage Bonds (as defined in Section 6.9(c) below), unless in each case the Companies agree in writing to extend the period to provide Margin Collateral. If the SSO Supplier receives a Margin Call after 1:00 p.m. prevailing Eastern Time on a Business Day, whether posting cash, a Letter of Credit, or First Mortgage Bond delivered or pledged as provided for in Section 6.9(c) below, then the SSO Supplier must post Margin Collateral on the second Business Day following the Margin Call unless the Companies agree in writing to extend the period to provide Margin Collateral. The Companies will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by the Companies not needed to satisfy the Margin ("Excess Collateral"), will be returned to the SSO Supplier upon receipt of a written request from the SSO Supplier; provided, however, that the SSO Supplier may not

request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the SSO Supplier posted cash and notice is received by 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the following Business Day and if the SSO Supplier posted cash and notice is received by the Companies after 1:00 p.m. prevailing Eastern Time on a Business Day, the Excess Collateral will be returned by the second Business Day following the date of notice. If the SSO Supplier posted a Letter of Credit, the Excess Collateral shall be returned on the next Business Day following the Business Day on which the amendment to the Letter of Credit is received from the issuing bank, unless in each case the SSO Supplier agrees in writing to extend such period for returning the Excess Collateral. The SSO Supplier will not unreasonably deny a request for a one-day extension of the period for returning the Excess Collateral. If the SSO Supplier is otherwise entitled to deliver or pledge its or its Guarantor's First Mortgage Bonds to cover Surplus Margin, but cannot do so within the second Business Day time period or any extension thereof, the SSO Supplier may initially post cash or a letter of credit to satisfy such obligation, which cash or letter of credit shall be returned by the Companies upon the subsequent delivery or pledge of its or its Guarantor's First Mortgage Bonds in accordance with the provisions of Section 6.9(c) hereof.

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

To secure its obligations under this Agreement, the SSO Supplier hereby grants to the Companies a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of any Company or partially in the name of

any Company or held for the benefit of any Company and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by any Company (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The SSO Supplier agrees to take such action as reasonably required to create and perfect the Companies' first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where an SSO Supplier is the Defaulting Party or an Early Termination Date (whether or not such SSO Supplier was the Defaulting Party), the Companies may do any one or more of the following in any order: (i) exercise any of the rights and remedies of the Companies, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such SSO Supplier in the possession of the Companies, whether held in connection with this Agreement or any Other SSO Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such SSO Supplier; (ii) draw on any outstanding Letter of Credit provided by such SSO Supplier and (iii) exercise any and all rights remedies available to it under and against any First Mortgage Bonds delivered or pledged in accordance with Section 6.9(c). The Companies will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such SSO Supplier's obligation under this Agreement and under any Other SSO Supply Agreement, and such SSO Supplier shall remain liable for any amounts owing to the Companies after

such application, subject to the Companies' obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding credit requirements and credit-related security or deposit transfers shall be sent in accordance with Section 13.1.

#### **6.9 Acceptable Forms of Security**

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

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

If the credit rating of a bank or other financial institution from which an SSO Supplier has obtained a Letter of Credit falls below the levels set forth in the definition of "Letter of Credit", the SSO Supplier will immediately notify the Companies and, within

one (1) Business Day 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 Companies; or

(c) with respect to Surplus Margin only the delivery or pledge of First Mortgage Bonds of the SSO Supplier or its Guarantor, which First Mortgage Bonds shall conform to the requirements set forth in Appendix H and otherwise be in form, amount and substance satisfactory to the Companies in their sole discretion. For purposes of this subsection (c),

(i) “Surplus Margin” means Margin in excess of \$400 million that has been secured by cash or letter of credit as defined in section (a) and (b) above and

(ii) “First Mortgage Bonds” means obligations of such SSO Supplier or Guarantor, as the case may be, evidenced by a first mortgage bond or other similar instrument and secured by a first priority lien on all or substantially all of the property, plant and equipment and related assets of such SSO Supplier or Guarantor.

Notwithstanding anything in this Agreement to the contrary, the Companies may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged, and in particular are not required to exercise any remedies whatsoever against any First Mortgage Bonds prior to applying any cash collateral against, or making a drawing under any letter of credit in respect of, any liabilities of the SSO Supplier hereunder or its Guarantor under the Guaranty to the Companies or any of them.

**6.10 Reporting; Maintenance of Creditworthiness.**

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

(b) If the lowest credit rating (whether corporate issuer rating or unsecured senior debt rating) used to determine the SSO Supplier's ICT or its Credit Limit adversely changes, the Companies will require ICR Collateral or Margin Collateral from such SSO Supplier in accordance with Sections 6.4, 6.6 and 6.7. The additional security must be in a form acceptable to the Companies, as specified in Section 6.9.

**6.11 Interest on Cash Held by Companies**

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

**6.12 No Endorsement of SSO Supplier**

The Companies' determination of an SSO Supplier's creditworthiness pursuant to the process set forth in this Article 6 will not be deemed to constitute an express or implied warranty or guarantee of any kind with respect to the financial or operational qualifications of such SSO Supplier. The Companies will treat all SSO Suppliers in a non-discriminatory manner and shall provide no preference to any SSO Supplier.

**ARTICLE 7: SCHEDULING, FORECASTING AND INFORMATION SHARING**

**7.1 Scheduling**

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

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

**7.2 Load Forecasting**

The Companies shall not be required to provide to any SSO Supplier any load forecasting services.

**ARTICLE 8: BILLING AND SETTLEMENT****8.1 Companies Statement**

Subject to Section 8.2, the Companies and each SSO Supplier shall pay all amounts due to each other hereunder in accordance with the following provisions:

(a) for each Billing Month, the Companies will prepare and provide an invoice to each SSO Supplier, which will show (i) amounts due to the SSO Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the PMEA, (ii) the PMEA/FMEA Adjustment from such Billing Month, if any, and (iii) all Charges due to the Companies incurred during the Billing Month (the "Statement"). The Companies will determine the total amount payable by one Party to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. For any amounts due and owing the Companies, the Companies will specify in each Statement how the amounts will be allocated among the Companies. In the case of the PMEA/FMEA Adjustment, the allocation will be based on the respective SSO Loads of the Companies.

(b) The Statement will be sent to each SSO Supplier within six (6) Business Days after the end of the Billing Month as provided in Section 13.1.

(c) The Companies or the SSO Supplier, as the case may be, will make payment on the first (1<sup>st</sup>) Business Day after the nineteenth (19<sup>th</sup>) day of each calendar month.

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

(e) The Companies or the SSO Supplier, as the case may be, shall make payments of funds by electronic transfer to a bank designated by the Companies and the SSO Supplier, as applicable.

(f) If a good faith dispute arises between the Companies and the SSO Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120) calendar days from the date of the Statement in dispute. Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 10. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six percent (6%) per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(g) If payment is made to the SSO Supplier 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 prime rate J.P. Morgan Chase (or, if not available, another financial institution selected by the Companies) charges commercial borrowers.

(h) In the event of a good faith dispute regarding any Statement, each SSO Supplier 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 the applicable Company. The right of verification will survive for one (1) year following the earlier of (i) the end of the Term or (ii) the Early Termination Date.

(i) Notwithstanding anything to the contrary contained in this Section 8.1, the determination of the allocation among the Companies of amounts due and owing to the Companies, as set forth in a Statement, will be final and binding, absent manifest error.

## **8.2 PJM Billing; Third Party Billing**

(a) The Companies and each SSO Supplier shall direct PJM to invoice the Companies and such SSO Supplier for PJM charges and credits relating to such SSO Supplier's and the Companies' rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, the Companies shall rectify such PJM invoice discrepancy in the Statement sent pursuant to Section 8.1.

(b) For Capacity purchased by an SSO Supplier pursuant to Section 2.1(b), such SSO Supplier shall, unless the Companies direct otherwise, be invoiced and submit payment for such Capacity directly to PJM in accordance with the billing practices set forth in the PJM Agreements.

(c) The Parties agree that the PJM invoice may change from time to time. Allocation of any charges that are reflected in a PJM invoice that are not included on or are inconsistent with Appendix G will be determined pursuant to Sections 2.3, 2.4, 2.5, and 13.12.

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

**ARTICLE 9:           SYSTEM OPERATION****9.1     Disconnection and Curtailment by the Companies**

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

**9.2     Loss of Service to SSO Customers**

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

**9.3 PJM Requirements**

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

**9.4 Compliance with Governmental Directives**

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

**ARTICLE 10: DISPUTE RESOLUTION****10.1 Informal Resolution of Disputes**

Any dispute arising out of or relating to this Agreement shall be subject to the dispute resolution procedures specified in this Article 10. If any dispute arises between any Parties in connection with this Agreement, such Parties in dispute shall first attempt in good faith to resolve such dispute between themselves. The disputing Parties shall comply in good faith with the procedures in this Section 10.1 before commencing litigation under Section 10.2. When any such dispute arises, a disputing Party shall deliver a notice of dispute to the other Party subject to the dispute in accordance with the notice procedures set forth in Section 13.1, such notice of dispute to include the nature of the dispute, the amount involved, if any, and the remedies sought. Within ten (10) Business Days after the receipt of such notice, members of the senior management of the Parties in dispute shall meet in person or by telephone to discuss the dispute. If such Parties have not resolved such dispute or if a meeting of senior management has not occurred within thirty (30) Business Days after receipt of the notice of dispute, then any such Party may bring such action at law or in equity as it deems necessary or desirable, in accordance with the provisions of Section 10.2. Any amounts that are owed by one Party to another Party as a result of resolution of a dispute pursuant to this Section 10.1 shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

**10.2 Formal Dispute Resolution**

After the requirements of Section 10.1 have been satisfied, all disputes between

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

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

Notwithstanding Section 10.2, nothing in this Agreement shall restrict the rights of either Party to file a complaint with the FERC under relevant provisions of the Federal Power Act (“FPA”) or with the PUCO under relevant provisions of the Applicable Legal Authorities. The Parties’ agreement under this Section 10.3 is without prejudice to any Parties’ right to contest the jurisdiction of the FERC or PUCO to which a complaint is brought.

**ARTICLE 11:        LIMITATION OF LIABILITY; RISK OF LOSS****11.1    Limitation of Liability**

Except to the extent expressly set forth in this Agreement, including Article 12, as between the Companies and each SSO Supplier, each Party will be liable to the other for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party will have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, nothing herein shall impose any obligations or liability from one SSO Supplier to any other SSO Supplier, except as provided in Article 12.

**11.2    Risk of Loss**

Title to and risk of loss with respect to SSO Supply shall pass from each SSO Supplier to the Companies when such SSO Supply is delivered to the Delivery Point. Until title passes, each SSO Supplier shall be deemed in exclusive control of SSO Supply provided by it and shall bear sole responsibility for any damage or injury caused thereby, subject to the provisions of Section 12.1. After title to such SSO Supply passes to the Companies, the Companies shall be deemed in exclusive control of such SSO Supply and shall bear sole responsibility for any damage or injury caused thereby, subject to the provisions of Section 12.1. Notwithstanding the foregoing, nothing contained in this Agreement is intended to create or increase liability of the Companies to any third party beyond such liability, if any, as would otherwise exist under the PJM Agreements or other applicable law if the Companies had not taken title.

**ARTICLE 12: INDEMNIFICATION****12.1 Indemnification**

(a) Each SSO Supplier must defend (at the Companies' option), indemnify and hold harmless the Companies, their shareholders, board members, directors, officers and employees, agents and attorneys from and against any and all third party (including PJM and each other SSO Supplier) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of such SSO Supplier with respect to an obligation arising under or in connection with this Agreement (including such SSO Supplier's failure to submit payments to PJM pursuant to Section 8.2(b)), or for which such SSO Supplier has otherwise assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of any of the Companies. The Companies may, at their own expense, retain counsel and participate in the defense of any such suit or action.

(b) The Companies and each SSO Supplier must defend (at the option of the Indemnified Supplier), indemnify and hold harmless each other SSO Supplier (the "Indemnified Supplier"), its shareholders, board members, directors, officers, employees, agents and attorneys from and against any and all third party (including another SSO Supplier) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or occur in connection with an act or omission of the Companies or such SSO

Supplier with respect to an obligation arising under or in connection with this Agreement, or for which any of the Companies or such SSO Supplier has otherwise assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article will not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for either Party under any statutory scheme, including any Worker's Compensation Acts, Disability Benefit Acts or other Employee Benefit Acts.

(d) If a Party intends to seek indemnification under Sections 12.1(a) or 12.1(b), as applicable, from any other Party, the Party seeking indemnification shall give the other Party notice of such claim within thirty (30) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. No Party may settle or compromise any claim without the prior consent of the Companies (for an indemnification under Section 12.1(a)) or the Indemnified Parties involved (for an

indemnification under Section 12.1(b)); provided, however, such consent shall not be unreasonably withheld or delayed.

**ARTICLE 13: MISCELLANEOUS PROVISIONS**

**13.1 Notices**

All notices, demands or requests required or permitted under this Agreement must be in writing and must be personally delivered or sent by email, overnight express mail, courier service or facsimile transmission (provided that in the case of an email or facsimile, the original shall then be transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to an SSO Supplier:

Notification information for each SSO Supplier is set forth on Appendix A.

If to the Company:

In the case of all notices except those required under Article 6, to:

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

Copy to:

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

In the case of all notices required under Article 6, to:

Thomas R. Sims  
Credit Risk Analyst  
FirstEnergy Service Company

341 White Pond Drive, A-WAC-C2  
Akron, OH 44320  
Telephone: 330-315-6983  
Facsimile: 330-436-1901  
simst@firstenergycorp.com

Copy to:

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

and:

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

and:

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

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

**13.2 No Waiver or Prejudice of Rights**

The failure of a Party to insist in one or more instances upon strict performance of any provisions of this Agreement, or to take advantage of any of its rights hereunder, may not be construed as a waiver of any such provisions or the relinquishment of any such right or any other right hereunder, which will remain in full force and effect. No term or condition of this Agreement will be deemed to have been waived and no breach excused unless such waiver or consent to excuse is in writing and signed by the Party claimed to have waived or consented to excuse.

**13.3 Assignment**

(a) The Companies may not assign this Agreement or their rights or obligations hereunder without the prior written consent of the other SSO Suppliers, which consent may not be unreasonably withheld; provided, however, that the Companies or any Company may, without the consent of the other SSO Suppliers:

(i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements;

(ii) transfer or assign this Agreement to any Person having a Minimum Rating; and

(iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of a Company.

(b) In the case of an assignment pursuant to Section 13.3(a)(ii) and (iii) above, the Companies may assign their obligations under this Agreement and shall be relieved of such obligations upon the assignment and assumption of the assignee of such obligations

and SSO Supplier's receipt of notice thereof, except for such obligations of the Companies which have arisen prior to the date of the assignment.

(c) An SSO Supplier may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the Companies, which consent may not be unreasonably withheld, it being understood that any assignee of such SSO Supplier must meet the creditworthiness requirements set forth in Article 6; provided, however, that such SSO Supplier may, without the consent of the Companies (and without relieving itself from liability hereunder) pledge or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements; provided further, however, that if any of the lenders receiving the collateral assignment foreclose or otherwise exercise remedies against the SSO Supplier, such lenders may not transfer, pledge or assign this Agreement to a Person who does not meet the creditworthiness requirements set forth in Article 6. For the avoidance of doubt, an SSO Supplier is not required to obtain the consent of any other SSO Supplier under this Section 13.3.

#### **13.4 Governing Law**

To the extent not subject to the jurisdiction of the FERC, questions including those concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement will be governed by the laws of the State of Ohio, without regard to principles of conflicts of law.

#### **13.5 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties hereto. Nothing in this Agreement may be construed to create any duty, or standard of care with reference

to, or any liability to, any Person not a Party to this Agreement.

### **13.6 Unenforceability or Invalidity**

Should any provision of this Agreement be held invalid or unenforceable, such provision will be invalid or unenforceable only to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable any other provision hereof, unless it materially changes the agreement of the Parties.

### **13.7 Entire Agreement**

Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement with respect to the subject matter hereof. The Parties further agree that this Agreement is the complete and exclusive statement of agreement with respect to the subject matter hereof and supersedes all proposals (oral or written), understandings, representations, conditions, warranties, covenants and all other communications between the Parties relating thereto.

### **13.8 Taxes**

All present and future federal, state, municipal or other taxes imposed by any taxing authority by reason of the provision of SSO Supply by an SSO Supplier under this Agreement (collectively, the "Taxes") will be the liability of the SSO Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the "Ohio Sales and Use Taxes"), which will be the Companies' responsibility. Should an SSO Supplier be required to remit any Ohio Sales and Use Taxes directly to the applicable taxing authority, other than Ohio Sales and Use Taxes previously collected by the SSO Supplier on behalf of the Companies, the Companies

will defend and indemnify the SSO Supplier for such Ohio Sales and Use Taxes and will pay to the SSO Supplier all such tax amounts upon demand. Each SSO Supplier shall pay all Taxes (other than Ohio Sales and Use Taxes) to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the affected SSO Supplier will, if requested, provide the Companies with valid tax exemption certificates. Should the Companies be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes and other Taxes previously collected by the Companies directly from an SSO Supplier), the SSO Supplier will defend and indemnify the Companies and will pay to the Companies all such Tax amounts upon demand.

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

### **13.9 Rules of Interpretation**

The following principles shall be observed in the interpretation and construction of this Agreement:

(a) unless otherwise stated, the terms “include” and “including” when used in this Agreement 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 Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;

(c) references to the singular include the plural and vice versa;

(d) any references to “and” or “or” shall mean “and/or” as the context so requires;

(e) references to Articles, Sections, Appendices and the preamble are, unless the context indicates otherwise, references to Articles, Sections, Appendices and the preamble of this Agreement;

(f) any reference to laws, rules, regulations, ordinances or decrees in this Agreement shall mean such law, rules, regulations, ordinances and decrees as may be amended, modified, replaced, codified or superseded from time to time; and

(g) this Agreement 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.

#### **13.10 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 Agreement, unless (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law or it reasonably believes it is necessary or advisable to disclose such document or information in connection with any PUCO or FERC regulatory proceeding; (ii) such document or information is generally available to

the public; or (iii) 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 13.10, a Party may disclose to its employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 13.10, 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.

(c) Each SSO Supplier agrees that the SSO Supplier's data and information submitted in the Solicitation will be disclosed if required by any federal, state or local agency (including the PUCO) or by a court of competent jurisdiction. However, the Companies will endeavor to notify the SSO Supplier in advance of such disclosure. In any event, none of the Companies, nor any of their employees or agents, will be responsible to the SSO Suppliers or any other party, or liable for any disclosure of such data or information. Notwithstanding the above, the Companies reserve the right to use and communicate publicly to third parties any and all information and data submitted as part of the Solicitation in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if the Companies deem it necessary or advisable, without the prior consent of, or notice to, any such SSO Supplier.

(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

13.10. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 13.10, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

### **13.11 Amendment**

Except as provided in Sections 5.4 and 13.12, this Agreement shall not be amended, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in Section 13.12, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the 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, et al., 554 U.S. \_\_\_, 128 S. Ct. 2733 (June 26, 2008).

### **13.12 PJM Agreement Modifications**

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

by the Parties) to refer to the new term, schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

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

**13.13 Agent**

The Companies shall have the right at any time and from time to time during the Term to appoint an agent to act on their behalf to exercise or pursue any of their rights or remedies and to perform any of their obligations or duties under this Agreement. The Companies shall give each SSO Supplier thirty (30) days prior written notice before the appointment of an agent.


**13.14 Counterparts**

This Agreement may be executed in counterparts, each of which will be considered an original, but all of which will constitute one instrument.

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

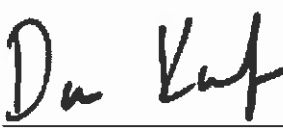
THE TOLEDO EDISON COMPANY

OHIO EDISON COMPANY

By: 

Name: Randall A. Frame


Title: Regional President

By: 

Name: David J. Karafa

Title: Regional President

THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

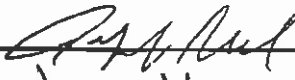

By: 

Name: John E. Skory

Title: Regional President

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

**AEP Energy Partners, Inc.**

By:  

Name: JEFFREY MERZEL

Title: AUTHORIZED AGENT

**APPENDIX A****SSO SUPPLIER RESPONSIBILITY SHARE**

SSO Supplier	Price (\$/MWh)	SSO Supplier Responsibility Share Percentage (%)	No. of Tranches
AEP Energy Partners, Inc.	\$59.17/MWh	6%	6 Tranche

Original Delivery Period: June 1, 2013, 12:00:01 A.M. through May 31, 2016.

Address for Notice:

1. In the case of all notices except those required under Article 6:

Name: Mr. Jeffrey Merzel, VP – Energy Trading  
 Address: 325 John H. McConnell Blvd, Suite 225; Columbus, Ohio 43215  
 Telephone: 614-583-7055  
 Facsimile: 614-583-1691  
 E-mail: jimmerzel@aep.com

copy to:

Name: Ms. Christine McGarvey, Energy Trader  
 Address: 325 John H. McConnell Blvd, Suite 225; Columbus, Ohio 43215  
 Telephone: 614-583-7035  
 Facsimile: 614-583-1691  
 E-mail: clmcgarvey@aep.com

2. In the case of all notices required under Article 6:

Name: Mr. Michael McCulty, Senior Analyst, Credit Risk Management  
 Address: 155 West Nationwide Blvd., Columbus, Ohio 43215  
 Telephone: 614-583-6842  
 Facsimile: 866-692-0121  
 E-mail: mmcculty@aep.com

copy to:

Name: Jay Jadwin  
Address: 155 W Nationwide Blvd; Suite 500 Columbus, OH 43215  
Telephone: 614-583 - 7634  
Facsimile:  
E-mail: jjjadwin@aep.com

AEP Energy Partners, Inc.

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BY: 

Name: JEFFREY MERZEL

Title: AUTHORIZED AGENT

Date: 1/24/2013

**APPENDIX B****SEASONAL BILLING FACTOR**

The Seasonal Billing Factors are as follows:

June 1 through August 31	1.1151
September 1 through December 31 and January 1 through May 31	0.9613

## APPENDIX C-1

## SCHEDULE FOR ICRT

Month	12-Month Procurement (\$/tranche)	24-Month Procurement (\$/tranche)	36-Month Procurement (\$/tranche)
June 2013	\$1,000,000	\$1,500,000	\$2,500,000
July 2013	\$1,000,000	\$1,500,000	\$2,500,000
August 2013	\$1,000,000	\$1,500,000	\$2,500,000
September 2013	\$1,000,000	\$1,500,000	\$2,500,000
October 2013	\$600,000	\$1,200,000	\$2,500,000
November 2013	\$600,000	\$1,200,000	\$2,000,000
December 2013	\$600,000	\$1,200,000	\$2,000,000
January 2014	\$600,000	\$1,200,000	\$2,000,000
February 2014	\$200,000	\$800,000	\$2,000,000
March 2014	\$200,000	\$800,000	\$1,750,000
April 2014	\$200,000	\$800,000	\$1,750,000
May 2014	\$200,000	\$800,000	\$1,750,000
June 2014		\$600,000	\$1,750,000
July 2014		\$600,000	\$1,500,000
August 2014		\$600,000	\$1,500,000
September 2014		\$600,000	\$1,500,000
October 2014		\$400,000	\$1,500,000
November 2014		\$400,000	\$1,250,000
December 2014		\$400,000	\$1,250,000
January 2015		\$400,000	\$1,250,000
February 2015		\$200,000	\$1,250,000
March 2015		\$200,000	\$1,000,000
April 2015		\$200,000	\$1,000,000
May 2015		\$200,000	\$1,000,000
June 2015			\$800,000
July 2015			\$800,000
August 2015			\$800,000
September 2015			\$600,000
October 2015			\$600,000
November 2015			\$600,000
December 2015			\$400,000
January 2016			\$400,000
February 2016			\$400,000
March 2016			\$200,000
April 2016			\$200,000
May 2016			\$200,000

**APPENDIX C-2****EXAMPLE MARK-TO-MARKET EXPOSURE AMOUNT CALCULATION**

The following is an illustration of the methodology the Companies will use to determine the Mark-to-Market Exposure Amounts for each SSO Supplier, including a methodology the Companies expect to use to derive off-peak Forward Market Prices. Notwithstanding the foregoing, if the Companies are unable to obtain publicly available market quotations for Forward Market Prices, Forward Market Prices will be determined by the Companies using any method which the Companies deem appropriate and which reasonably reflects forward market pricing conditions in PJM.

On the closing day of the Solicitation, the following parameters are determined by the Companies:

1. The expected On-Peak SSO Load per Tranche;
2. The expected Off-Peak SSO Load per Tranche;
3. Prevailing On-Peak Forward Market Prices for each month during the Original Delivery Period; and
4. Ratios of Off-Peak to On-Peak monthly Forward Market Prices for each month during the Original Delivery Period (to be used to determine the Off-Peak Forward Market Prices from the On-Peak Forward Market Prices).

The Forward Market Prices prevailing on the closing day of the Solicitation are used to establish the "mark" for each month during the Original Delivery Period. Table 1 contains hypothetical initial On-Peak Forward Market Prices for a 12-month Original Delivery Period from June 2013 through May 2014. The initial Off-Peak Forward Market Prices are determined by multiplying the On-Peak Forward Market Prices for each Billing Month in Table 1 by the ratios of off-peak to on-peak prices for each Billing

Month in Table 2. Table 3 contains the hypothetical "marks" established on the day the Solicitation is completed using the Forward Market Prices established in Tables 1 and 2. The "marks" will not change over the Original Delivery Period.

For each calculation of the Mark-to-Market Exposure Amount, the Companies will determine the Forward Market Prices for each month during the Original Delivery Period. Table 4 contains hypothetical Forward Market Prices as of the first day of the Original Delivery Period. Table 5 contains a calculation of the Mark-to-Market Exposure Amount as of the first date of the Delivery Period for the twelve-month Original Delivery Period based on the difference between the hypothetical "marks" set forth in Table 3 and the hypothetical Forward Market Prices set forth in Table 4.

**MARK-TO-MARKET EXAMPLE**

**All Energy prices are based on a Market Price Hub**

***Table 1 – Hypothetical Initial Market Price Data***

**On-Peak Forward Market Price Quotes on the Solicitation Closing Date**

<b>Month</b>	<b>Jun-13</b>	<b>Jul-13</b>	<b>Aug-13</b>	<b>Sep-13</b>	<b>Oct-13</b>	<b>Nov-13</b>
On-Peak	\$46.39	\$56.39	\$56.39	\$44.56	\$40.90	\$44.03

<b>Month</b>	<b>Dec-13</b>	<b>Jan-14</b>	<b>Feb-14</b>	<b>Mar-14</b>	<b>Apr-14</b>	<b>May-14</b>
On-Peak	\$43.11	\$53.11	\$51.69	\$50.40	\$50.40	\$48.43

***Table 2 - Off-peak Forward Market Price Factors***

**The Companies' Pre-determined Ratio of Off-Peak to On-Peak Prices**

<b>Month</b>	<b>Ratio of Off-Peak to On-Peak Price</b>
January	0.75
February	0.75
March	0.75
April	0.75
May	0.75
June	0.65
July	0.65
August	0.65
September	0.65
October	0.75
November	0.75
December	0.75

**Table 3 – Hypothetical Closing Day "Marks"**  
**"Marks" Set on the Solicitation Closing Date**  
 Energy (MWh/Tranche)

Hypothetical prices for June 2013 through May 2014 so as to correspond to a one-year Original Delivery Period.

	<b>On-Peak Volume</b>	<b>Off-Peak Volume</b>	<b>On-Peak Price</b>	<b>Off-Peak Price</b>
Jun-13	5,681	6,083	\$46.39	\$30.15
Jul-13	6,934	6,123	\$56.39	\$36.65
Aug-13	6,756	5,832	\$56.39	\$36.65
Sep-13	5,411	5,500	\$44.56	\$28.96
Oct-13	5,776	5,069	\$40.90	\$30.68
Nov-13	5,289	5,795	\$44.03	\$33.02
Dec-13	6,115	6,585	\$43.11	\$32.33
Jan-14	6,539	6,422	\$53.11	\$39.83
Feb-14	6,058	6,019	\$51.69	\$38.77
Mar-14	5,704	6,140	\$50.40	\$37.80
Apr-14	5,619	5,188	\$50.40	\$37.80
May-14	5,329	5,343	\$48.43	\$36.32

**Table 4 – Hypothetical Forward Market Prices on Day 1 of the Delivery Period**  
**On-Peak Forward Market Quotes on Day 1 of the Delivery Period**

<b>Month</b>	<b>Jun-13</b>	<b>Jul-13</b>	<b>Aug-13</b>	<b>Sep-13</b>	<b>Oct-13</b>	<b>Nov-13</b>
On-Peak	\$46.39	\$57.39	\$56.39	\$46.56	\$40.90	\$45.03

<b>Month</b>	<b>Dec-13</b>	<b>Jan-14</b>	<b>Feb-14</b>	<b>Mar-14</b>	<b>Apr-14</b>	<b>May-14</b>
On-Peak	\$44.11	\$53.11	\$51.69	\$50.40	\$50.40	\$48.43

**Table 5 – MtM on Day 1 of the Delivery Period****Hypothetical Mark-to-Market set on Day 1 of the Delivery Period  
Energy (MWh/tranche)**

Data for June 2013 through May 2014 so as to correspond to a one-year Original Delivery Period

	On- Peak Load per Tranche (MWh)	Off-Peak Load per Tranche (MWh)	Mark for On-Peak Prices	Current Day 1 On- Peak Prices	Change in On-Peak Price	Change in Off-Peak Price	MtM
Jun-13	5,681	6,083	\$46.39	\$46.39	\$-	\$-	\$-
Jul-13	6,934	6,123	\$56.39	\$57.39	\$1.00	\$0.65	\$10,914
Aug-13	6,756	5,832	\$56.39	\$56.39	\$-	\$-	
Sep-13	5,411	5,500	\$44.56	\$46.56	\$2.00	\$1.30	\$17,972
Oct-13	5,776	5,069	\$40.90	\$40.90	\$-	\$-	
Nov-13	5,289	5,795	\$44.03	\$45.03	\$1.00	\$0.75	\$ 9,635
Dec-13	6,115	6,585	\$43.11	\$43.11	\$-	\$-	
Jan-14	6,539	6,422	\$53.11	\$53.11	\$-	\$-	
Feb-14	6,058	6,019	\$51.69	\$51.69	\$-	\$-	
Mar-14	5,704	6,140	\$50.40	\$50.40	\$-	\$-	
Apr-14	5,619	5,188	\$50.40	\$50.40	\$-	\$-	
May-14	5,329	5,343	\$48.43	\$48.43	\$-	\$-	
						<b>Total</b>	<b>\$ 38,521</b>

**APPENDIX D**

**FORM OF SSO SUPPLIER LETTER OF CREDIT**

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

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

To: The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company ("Beneficiaries")

1. We hereby establish in your favor this irrevocable transferable Letter of Credit (this "Letter of Credit") for the account of \_\_\_\_\_ (the "Applicant"), in the aggregate amount of \$\_\_\_\_\_, effective immediately and available to you at sight upon demand at our counters at \_\_\_\_\_ and expiring 364 days from date of issuance or any extension thereof (in the form of Annex 5), unless terminated earlier or automatically extended, in accordance with the provisions hereof or otherwise extended.
2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in paragraph 12 hereof. This Letter of Credit may be drawn upon an Event of Default under that certain Master SSO Supply Agreement between the Applicant and you, dated \_\_\_\_\_.
3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00

A.M. (prevailing Eastern Time<sup>1</sup>) 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 Beneficiaries and (ii) your draft in the  
form of Annex 2 hereto, appropriately completed and duly signed by an Authorized  
Officer of each of the Beneficiaries. "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

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

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 Beneficiaries 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 Beneficiaries located at \_\_\_\_\_ above (as per Applicant's instructions). The aggregate amount paid to the Companies 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 Beneficiaries. 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 Beneficiaries.

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 \$ \_\_\_\_\_, due to an Event of Default under any Master SSO Supply Agreement between the Applicant and us.
3. The amount to be received by The Cleveland Electric Illuminating Company is \$ \_\_\_\_\_, the amount to be received by The Toledo Edison Company is \$ \_\_\_\_\_ and the amount to be received by The Ohio Edison Company is \$ \_\_\_\_\_, for a total equal to the aggregate amount in the previous paragraph.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

The Cleveland Electric Illuminating Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The Toledo Edison Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Ohio Edison 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:           The Cleveland Electric Illuminating Company  
\$ \_\_\_\_\_

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

PAY TO:           The Toledo Edison Company  
\$ \_\_\_\_\_

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

PAY TO:           Ohio Edison Company  
\$ \_\_\_\_\_

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

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

(Bank)  
(Address)

The Cleveland Electric Illuminating Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

The Toledo Edison Company  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Ohio Edison 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:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the "New Amount") and to expire on \_\_\_\_\_ (date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Redacted Signature]  
[Redacted Name]

Very truly yours,

The Cleveland Electric Illuminating Company  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

The Toledo Edison Company  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

Ohio Edison Company  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

Agreed and Accepted  
(Bank)  
By: \_\_\_\_\_  
Title:  
Date:

APPLICANT NAME  
APPLICANT NAME  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

**Annex 4 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

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

**Annex 5 to Letter of Credit**

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

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

To The Cleveland Electric Illuminating Company, The Toledo Edison Company and  
Ohio Edison Company:

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

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

Very truly yours,

BANK \_\_\_\_\_

By \_\_\_\_\_

Name:

Title:

Date:

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

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

**Annex 6 to Letter of Credit**

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

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

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For the value received, the undersigned beneficiary hereby irrevocably transfers to:

\_\_\_\_\_  
(Name of Transferee)

\_\_\_\_\_  
(Address)

all rights of the undersigned Beneficiaries to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiaries 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,

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

\_\_\_\_\_  
(Authorized signature of authenticating party)

Name

Title

## APPENDIX E

### FORM OF GUARANTY

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

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

1. The Guarantor, as primary obligor and not merely as surety, hereby irrevocably and unconditionally guarantees the full and prompt payment when due (whether by acceleration or otherwise) of the principal and interest on any sums due and payable by the SSO Supplier as a result of an Event of Default under the Agreement (including indemnities, damages, fees and interest thereon, pursuant to the terms of the Agreement). Notwithstanding anything to the contrary herein, the maximum aggregate liability of the Guarantor under this Guaranty shall [Option 1 {in no event exceed \_\_\_\_\_}.] Option 2 {in no event exceed the lesser of the credit limit amount or the sum of the Total Exposures Amounts under the Agreement(s).}] All such principal, interest, obligations and liabilities, collectively, are the "Guaranteed Obligations". This Guaranty is a guarantee of payment and not of collection.
2. The Guarantor hereby waives diligence, acceleration, notice of acceptance of this Guaranty and notice of any liability to which it may apply, and waives presentment and all demands whatsoever except as noted herein, notice of protest, notice of dishonor or nonpayment of any such liability, suit or taking of other action by any Guaranteed Party against, and any other notice to, any party liable thereon (including the Guarantor or any other guarantor), filing of claims with a court in the event of the

insolvency or bankruptcy of the SSO Supplier, and any right to require a proceeding first against the SSO Supplier.

3. The Guaranteed Parties may, at any time and from time to time, without notice to or consent of the Guarantor, without incurring responsibility to the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions: (i) take or refrain from taking any and all actions with respect to the Guaranteed Obligations, any document or any person (including the SSO Supplier) that the Guaranteed Parties determine in their sole discretion to be necessary or appropriate; (ii) take or refrain from taking any action of any kind in respect of any security for any Guaranteed Obligation(s) or liability of the SSO Supplier to the Guaranteed Parties; or (iii) compromise or subordinate any Guaranteed Obligation(s) or liability of the SSO Supplier to the Guaranteed Parties including any security therefore.
  
4. Subject to the terms and conditions hereof, the obligations of the Guarantor under this Guaranty are absolute and unconditional and, without limiting the generality of the foregoing, shall not be released, discharged or otherwise affected by: (i) any extension, renewal, settlement, compromise, waiver, consent, discharge or release of the SSO Supplier concerning any provision of the Agreement(s) in respect of any Guaranteed Obligations of the SSO Supplier; (ii) the rendering of any judgment against the SSO Supplier or any action to enforce the same; (iii) the existence, or extent of, any release, exchange, surrender, non-perfection or invalidity of any direct or indirect security for any of the Guaranteed Obligations (to which the Guarantor hereby consents) ; (iv) any modification, amendment, waiver, extension of or supplement to any of the Agreement(s) or the Guaranteed Obligations agreed to from time to time by the SSO Supplier and the Guaranteed Parties; (v) any change in the corporate existence (including its constitution, laws, rules, regulations or powers), structure or ownership of the SSO Supplier or the Guarantor, or any insolvency, bankruptcy, reorganization or other similar proceedings affecting the SSO Supplier or its assets, the Guarantor or any other guarantor of any of the Guaranteed Obligations; (vi) the existence of any claim, set-off or other rights which the Guarantor may have at any time against the SSO Supplier, the Guaranteed Parties or any other corporation or person, whether in connection herewith or in connection with any unrelated transaction; provided that nothing herein shall prevent the assertion of any such claim by separate suit or compulsory counterclaim; (vii) the invalidity, irregularity or unenforceability in whole or in part of the Agreement or any Guaranteed Obligations or any instrument evidencing any Guaranteed Obligations or the absence of any action to enforce the same, or any provision of applicable law or regulation purporting to prohibit payment by the SSO Supplier of amounts to be paid by it under the Agreement or any of the Guaranteed Obligations; and (viii) except for a failure to comply with any applicable statute of limitations, any other act or omission to act or delay of any kind of the SSO Supplier, any other guarantor, the Guaranteed Parties or any other corporation or person or any other event, occurrence or circumstance whatsoever which might, but for the provisions of this paragraph, constitute a legal or equitable discharge of the Guarantor's obligations hereunder.

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

telefacsimile (effective upon receipt of evidence, including telefacsimile evidence, that telefacsimile was received):

If to the Guarantor:

[REDACTED]

If to the Guaranteed Parties:

Thomas R. Sims  
Credit Risk Analyst  
FirstEnergy Corp.  
341 White Pond Drive, A-WAC-C2  
Akron, OH 44320  
Telephone: 330-315-6983  
Facsimile: 330-436-1901  
[simst@firstenergycorp.com](mailto:simst@firstenergycorp.com)

Copy to:

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

and:

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

and:

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

12. If claim is ever made upon the Guaranteed Parties for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed Obligations and the Guaranteed Parties repay all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Parties hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.
13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.
14. This Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Parties, which termination shall be effective only upon receipt by the Guaranteed Parties of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Parties. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its \_\_\_\_\_ *[insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement,*

*Articles of Incorporation or by-laws*] or any law, regulation or contractual restriction binding on it or its assets.

16. This Guaranty and the rights and obligations of the SSO Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Ohio. The Guarantor and Guaranteed Parties agree to the exclusive jurisdiction of State and federal courts located in the State of Ohio over any disputes arising from or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Parties each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.
17. This writing is the complete and exclusive statement of the terms of this Guaranty and supersedes all prior oral or written representations, understandings, and agreements between the Guaranteed Parties and the Guarantor with respect to subject matter hereof. The Guaranteed Parties and the Guarantor agree that there are no conditions to the full effectiveness of this Guaranty.
18. Every provision of this Guaranty is intended to be severable. If any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. This Guaranty may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
19. No trustee or shareholder of Guarantor shall be held to any liability whatsoever for any obligation under this Guaranty, and such Guaranty shall not be enforceable against any such trustee in his or her individual capacity. This Guaranty shall be enforceable against the trustees of Guarantor only as such, and every person, firm, association, trust or corporation having any claim or demand arising under this Guaranty and relating to Guarantor, its shareholders or trustees shall look solely to the trust estate of Guarantor for the payment or satisfaction thereof.

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

[GUARANTOR]

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

Accepted and Agreed to:

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

## APPENDIX F

### FORM OF PJM DECLARATION OF AUTHORITY

This Declaration of Authority is made this \_\_\_\_ day of \_\_\_\_, \_\_\_\_ by the Cleveland Electric Illuminating Company, the Toledo Edison Company and the Ohio Edison Company, (collectively, "**PARTY A**") and [SSO Supplier] ("**PARTY B**") for the benefit of PJM Interconnection, L.L.C. ("**PJM**").

#### RECITALS:

WHEREAS, PJM is a Regional Transmission Organization subject to the jurisdiction of the Federal Energy Regulatory Commission;

WHEREAS, PJM administers centralized markets that clear various electric energy and energy-related products among multiple buyers and sellers;

WHEREAS, PJM additionally exercises operational control over its members' transmission facilities whereby PJM provides control area functions, including economic dispatch, the scheduling of transmission service and emergency response to ensure reliability across an integrated transmission system; and

WHEREAS, in capacities more fully described below, PARTY A and PARTY B seek to participate either directly or indirectly in the markets administered by PJM or engage in operations that use or affect the integrated transmission system operated by PJM.

#### DECLARATION:

NOW, THEREFORE, acknowledging that PJM will rely on the truth, accuracy and completeness of the statements made below, PARTY A and PARTY B, as indicated below, provide the following declaration:

1. Declaration.
  - a. PARTY B hereby declares that in all activities with PJM regarding PARTY B's provision of energy, capacity, ancillary services, scheduling and procurement of transmission service, congestion management and all other required products and services necessary to serve the load obligation assumed by PARTY B under the Master SSO Supply Agreement, dated [\_\_\_\_], by and between PARTY A and Party B (the "Agreement"), PARTY B shall be billed and be primarily liable to PJM for all costs

associated in its procurement of such products and services (the "Declaration").

2. Reliance On Declarations

- a. Each of PARTY A and PARTY B recognizes and accepts that PJM is relying on the truth, accuracy and completeness of the Declaration made in making its assessments as to creditworthiness and in assuring PJM's own compliance with its tariff, operating agreement, reliability agreement and business practices.
- b. Each of PARTY A and PARTY B recognizes and accepts that each has a continuing duty to notify PJM if and when the Declaration made cease to be accurate and complete. Until such time as PJM receives written notification of any changes to such Declaration, signed by both PARTY A and PARTY B, PJM shall be entitled to rely perpetually on this Declaration as governing its relationship with PARTY A and PARTY B as to the subject matter of this Declaration. Any written notice of changes to the Declaration must be provided to PJM at least thirty days in advance of their effectiveness.
- c. Each of PARTY A and PARTY B recognize and acknowledge that PJM will receive and rely on individually modeled accounts that contain only zonal-specific Provider of Last Resort load to manually adjust the accounts to move the applicable billing line items' amounts in their entirety from the applicable supplier's account to the applicable buyer's account.
- d. PARTY A and PARTY B recognize and acknowledge that they have entered into the Agreement and that the Declaration is not intended in any way to change, revise or redistribute the rights and obligations of PARTY A or PARTY B under the Agreement. If the Declaration is determined to be inconsistent with any provision of the Agreement, with respect to the rights and obligations of PARTY A and PARTY B under the Agreement, the provisions of the Agreement shall be controlling on PARTY A and PARTY B.

3. Duration. Each of PARTY A and PARTY B acknowledge and agree that the Declaration shall terminate upon the termination of the Agreement in accordance with its terms. To this end, within thirty (30) days prior to the termination of the Agreement in accordance with its terms or as soon thereafter as is practicable, each of PARTY A and PARTY B will provide written notice to PJM of the termination of the Declaration.

IN WITNESS WHEREOF, PARTY A and PARTY B execute this Declaration to be effective as of the date written above.

**PARTY A**

\_\_\_\_\_

NAME:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

**PARTY B**

\_\_\_\_\_

NAME:

\_\_\_\_\_

TITLE:

\_\_\_\_\_

## APPENDIX G

## SAMPLE PJM INVOICE

<b>Finalized PJM Billing Statement Line Items (as of Sept. 01, 2010)</b>		
<b>ID #</b>	<b>Resp.</b>	<b>CHARGES</b>
1000	SSO S	Amount Due for Interest on Past Due Charges
1100	EDC	<b>Network Integration Transmission Service</b>
1104	EDC	<b>Network Integration Transmission Service Offset</b>
1108	EDC	<b>Transmission Enhancement</b>
1110	SSO S	Direct Assignment Facilities
1120	SSO S	Other Supporting Facilities
1130	SSO S	Firm Point-to-Point Transmission Service
1133	SSO S	Firm Point-to-Point Transmission Service Resale
1135	SSO S	Neptune Voluntary Released Transmission Service (Firm)
1138	SSO S	Linden Voluntary Released Transmission Service (Firm)
1140	SSO S	Non-Firm Point-to-Point Transmission Service
1143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
1145	SSO S	Neptune Voluntary Released Transmission Service (Non-Firm)
1146	SSO S	Neptune Default Released Transmission Service (Non-Firm)
1147	SSO S	Neptune Unscheduled Usage Billing Allocation
1155	SSO S	Linden Voluntary Released Transmission Service (Non-Firm)
1156	SSO S	Linden Default Released Transmission Service (Non-Firm)
1157	SSO S	Linden Unscheduled Usage Billing Allocation
1200	SSO S	Day-ahead Spot Market Energy
1205	SSO S	Balancing Spot Market Energy
1210	SSO S	Day-ahead Transmission Congestion
1215	SSO S	Balancing Transmission Congestion
1218	SSO S	Planning Period Congestion Uplift
1220	SSO S	Day-ahead Transmission Losses
1225	SSO S	Balancing Transmission Losses
1230	SSO S	Inadvertent Interchange
1240	SSO S	Day-ahead Economic Load Response
1241	SSO S	Real-time Economic Load Response
1245	SSO S	Emergency Load Response
1250	SSO S	Meter Error Correction
1260	SSO S	Emergency Energy
1301	SSO S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	SSO S	PJM Scheduling, System Control and Dispatch Service - FTR Administration

1303	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	SSO S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	SSO S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	SSO S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1308	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1314	SSO S	Market Monitoring Unit (MMU) Funding
1315	SSO S	FERC Annual Charge Recovery
1316	SSO S	Organization of PJM States, Inc. (OPSI) Funding
1317	SSO S	North American Electric Reliability Corporation (NERC)
1318	SSO S	Reliability First Corporation (RFC)
1320	EDC	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
1330	EDC	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	SSO S	Regulation and Frequency Response Service
1350	SSO S	Energy Imbalance Service
1360	SSO S	Synchronized Reserve
1365	SSO S	Day-ahead Scheduling Reserve
1370	SSO S	Day-ahead Operating Reserve
1371	SSO S	Day-ahead Operating Reserve for Load Response
1375	SSO S	Balancing Operating Reserve
1376	SSO S	Balancing Operating Reserve for Load Response
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1900	SSO S	Unscheduled Transmission Service
1910	SSO S	Ramapo Phase Angle Regulators
1920	SSO S	Station Power
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1950	SSO S	Virginia Retail Administrative Fee
1955	SSO S	Deferral Recovery
1980	SSO S	Miscellaneous Bilateral
1995	SSO S	PJM Annual Membership Fee
1999	SSO S	PJM Customer Payment Default
TBD	EDC	Midwest ISO Transmission Expansion Plan Assessment
<b>ID #</b>	<b>Resp.</b>	<b>CREDITS</b>
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2104	EDC	Network Integration Transmission Service Offset
2106	SSO S	Non-Zone Network Integration Transmission Service
2108	EDC	Transmission Enhancement
2110	SSO S	Direct Assignment Facilities
2120	SSO S	Other Supporting Facilities
2130	SSO S	Firm Point-to-Point Transmission Service
2132	SSO S	Internal Firm Point-to-Point Transmission Service
2133	SSO S	Firm Point-to-Point Transmission Service Resale
2135	SSO S	Neptune Voluntary Released Transmission Service (Firm)
2138	SSO S	Linden Voluntary Released Transmission Service (Firm)
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2142	SSO S	Internal Non-Firm Point-to-Point Transmission Service
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2380	SSO S	Black Start Service
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2500	SSO S	Financial Transmission Rights Auction
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2663	SSO S	Qualifying Transmission Upgrade Compliance Penalty
2664	SSO S	Peak Season Maintenance Compliance Penalty
2665	SSO S	Peak-Hour Period Availability
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2720	SSO S	RTO Start-up Cost Recovery
2730	SSO S	Expansion Cost Recovery
2910	SSO S	Ramapo Phase Angle Regulators
2930	EDC	Generation Deactivation
2950	SSO S	Virginia Retail Administrative Fee
2955	SSO S	Deferral Recovery
2980	SSO S	Miscellaneous Bilateral
2996	SSO S	Annual PJM Cell Tower
2997	SSO S	Annual PJM Building Rent
TBD	EDC	Midwest ISO Transmission Expansion Plan Assessment

## **APPENDIX H**

### **FIRST MORTGAGE BONDS**

Any First Mortgage Bonds delivered or pledged in satisfaction of the Surplus Margin requirements of Section 6.9(c) of the Agreement by the SSO Supplier or its Guarantor (each, an “Issuer”) shall be in a maximum principal amount of not less than \$250 million; provided that First Mortgage Bonds delivered or pledged to cover the first \$500 million of Surplus Margin shall be in a maximum principal amount of not less than \$500 million; provided further that the provisions of such First Mortgage Bonds may provide that the aggregate liability of the Issuer thereunder at any given time will be the lesser of the aggregate maximum principal amount of all such First Mortgage Bonds then delivered or pledged and the actual amount of Surplus Margin then due under the Agreement. Such First Mortgage Bonds shall also satisfy the following conditions:

- 1) the Issuer’s First Mortgage Bonds or other senior secured debt securities that are *pari passu* with such First Mortgage Bonds shall at the date of delivery or pledge be rated at least BB, Ba2 or BB by any of S&P, Moody’s or Fitch;
- 2) all required State and Federal regulatory approvals for the delivery or pledge of such First Mortgage Bonds shall have been obtained and be in full force and effect;
- 3) any mortgage, indenture, deed of trust or other security agreement (the “Indenture”) providing for the issuance and delivery of the First Mortgage Bonds shall be a first priority lien on the property covered thereby subject only to customary permitted encumbrances, and shall contain customary provisions including with respect to:
  - a) the coverage of the lien thereof to appropriate asset classes (i.e. all assets used or useful in the generating electricity) and the maintenance and protection of the effectiveness and priority of such lien and the collateral covered thereby;
  - b) the limitation in amount of any First Mortgage Bond or other ratable obligations issuable thereunder to not more than 75% of the lower of cost or fair value of collateral covered thereby;
  - c) the exercise of remedies against the Issuer and such collateral in the event of, among other things, any default in payment, compliance with covenants or occurrence of bankruptcy, insolvency or similar proceedings;

- 4) the Issuer shall provide the Companies with customary legal opinions of outside counsel as to such matters as the Companies may request, including, but not limited to:
  - a) the authorization, execution, delivery and enforceability of the First Mortgage Bonds and the Indenture,
  - b) the due recordation of the Indenture and creation and priority of the lien thereof,
  - c) the Issuer's valid and marketable title to the property covered by the lien of the Indenture, and
  - d) the receipt and full force and effect of all required State and Federal approvals; and
- 5) the structure of the delivery or pledge of the First Mortgage Bonds shall be acceptable to the Ohio Utilities (i.e. pledge, guaranty, escrow, etc.).

Notwithstanding the foregoing, any First Mortgage Bonds delivered or pledged in satisfaction of the requirements of Section 6.9(c) of the Agreement shall be in form, amount and substance satisfactory to the Companies in their sole discretion and the Companies hereby reserve the right to waive or modify any of the above conditions in their sole discretion.

# **ATTACHMENT C**

**MASTER STANDARD SERVICE OFFER (“SSO”)**

**SUPPLY AGREEMENT**

**BY AND BETWEEN**

**DUKE ENERGY OHIO, INC.**

**AND**

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

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## **MASTER SSO SUPPLY AGREEMENT**

This Master SSO Supply Agreement (“Agreement”), dated as of May 24, 2013 (“Effective Date”), is by and between Duke Energy Ohio, Inc., an Ohio corporation with offices at 139 East Fourth Street, Cincinnati, Ohio (“Duke Energy Ohio”) and each of the suppliers listed on Attachment A severally, but not jointly, (each an “SSO Supplier” and collectively “SSO Suppliers”). Duke Energy Ohio and each SSO Supplier are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

### **RECITALS**

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

**WHEREAS**, the PUCO found that, commencing on and after January 1, 2012, it would serve the public interest for Duke Energy Ohio to secure SSO Supply through a competitive bidding process; and

**WHEREAS**, on May 21, 2013, Duke Energy Ohio conducted and completed a successful Solicitation for SSO Supply; and

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

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

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

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

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

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

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

## **ARTICLE 1**

### **DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“LIBOR” means the rates published daily as the London Inter-Bank Offered Rates for U.S. dollar deposits. For discounting purposes, the rates will be converted into a series of monthly rates representing the equivalent forward LIBOR rate from the valuation date to the month of delivery.

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

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

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

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

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

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

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

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

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

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

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

“MW” means megaWatt.

“MWh” means megaWatt hour.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

may be imposed by PJM, and such other services or products that are provided by a CRES Supplier or an SSO Supplier to fulfill its obligations to serve customer load, as required by Section 4928.141 of the Ohio Revised Code.

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

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

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

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

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

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

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

## **ARTICLE 2**

### **TERM AND TERMINATION**

#### **2.1 Term**

The Term of this Agreement shall begin on the Effective Date and extend through and include the end of the Delivery Period (“Term”) unless terminated earlier or extended pursuant to the terms of this Agreement; provided, however, that the provision of SSO Supply by SSO Suppliers will commence on June 1, 2014 at 12:01 a.m. prevailing Eastern Time and end on May 31, 2015.

## **2.2 Mutual Termination**

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

## **2.3 Early Termination**

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

## **2.4 Effect of Termination**

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

# **ARTICLE 3**

## **GENERAL TERMS AND CONDITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

Duke Energy Ohio hereby agrees as follows:

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

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

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

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

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

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

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

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

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

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

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

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

### **3.4 Reliability Guidelines**

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

### **3.5 Regulatory Authorizations**

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

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

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

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

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

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

### **3.8 Sales for Resale**

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

## **ARTICLE 4**

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

#### **4.1 Scheduling**

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

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

#### **4.2 Load Forecasting**

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

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

Duke Energy Ohio shall have the right, without incurring any liability to any SSO Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the SSO Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever Duke Energy Ohio determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of Duke Energy Ohio's

facilities; or due to any other reason affecting the safe and reliable operation of any of Duke Energy Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of Duke Energy Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when Duke Energy Ohio is directed by PJM. Duke Energy Ohio shall not show any preference for any Affiliate in connection with any such disconnection, curtailment or reduction.

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

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

#### **4.5 PJM Requirements**

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

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

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

## **ARTICLE 5**

### **CREDIT AND PERFORMANCE SECURITY**

#### **5.1    Applicability**

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

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

#### **5.2    Creditworthiness Determination**

Duke Energy Ohio will determine the creditworthiness of an SSO Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate or issuer rating). Duke Energy Ohio will have full discretion, without liability or recourse to such SSO Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such SSO Supplier or Guarantor. Duke Energy Ohio may re-evaluate the creditworthiness of an SSO Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in such SSO Supplier's or Guarantor's credit standing. In addition, the SSO Supplier may petition Duke Energy Ohio to re-evaluate its creditworthiness whenever an event occurs that the SSO Supplier reasonably believes would improve the determination made by Duke Energy Ohio of its or its Guarantor's

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

### **5.3 Independent Credit Requirement**

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

### **5.4 Independent Credit Threshold**

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

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

i. the SSO Supplier or its Guarantor, as applicable, must (1) be rated by Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch"), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer rating) of at least "BB" from S&P, "Ba2" from Moody's, or "BB" from Fitch (a "Minimum Rating"). If the SSO Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the SSO Supplier or its Guarantor is rated by three rating agencies and the ratings are split, the lower of the two highest ratings will

be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the ICT will be determined based on the following table:

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

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

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

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

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

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

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

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

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

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

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

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

To calculate the Mark-to-Market Exposure Amount for each SSO Supplier, the following mark-to-market credit exposure methodology will be used. A “market value” for each Tranche will be determined at the time the Solicitation is completed based on the then prevailing market prices, as described further in Attachment C-2. At the time the Solicitation is completed, the Mark-to-Market Exposure Amount for each SSO Supplier shall be set equal to zero. Subsequently, the differences between the prevailing market prices on a valuation date and the market prices in effect on the date the Solicitation is completed will be used to calculate the Mark-to-Market Exposure Amounts for each SSO Supplier, as described further in Attachment C-2. The total Mark-to-Market Exposure Amount will be equal to the sum of the Mark-to-Market Exposure Amounts for each Billing Period, or portion thereof, remaining during the Original Delivery Period. Forward Market Prices will be determined with reference to publicly available market price quotations obtained by Duke Energy Ohio, as adjusted by Duke Energy Ohio to more closely approximate the price impact of serving a requirements load which reflects

hourly variations due to customer usage patterns. Such adjustment is further described in Attachment C-2. However, if market price quotations are not publicly available, Forward Market Prices will be determined by Duke Energy Ohio using any method which Duke Energy Ohio deems appropriate and which reasonably reflects forward market pricing conditions in PJM. The Mark-to-Market Exposure Amount will also be adjusted on a monthly basis to reflect changes in expected SSO Load by means of a volume adjustment factor. The Mark-to-Market Exposure Amount will be stated on a present value basis by discounting using the then-prevailing LIBOR rate. The methodology for calculation of the Mark-to-Market Exposure Amount is illustrated in the example (using hypothetical numbers) in Attachment C-2.

## **5.6 Credit Limit**

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

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

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

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

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

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

- i. the SSO Supplier must supply such evidence of creditworthiness as to provide Duke Energy Ohio with comparable assurances of creditworthiness as applicable above for SSO Suppliers that have been organized under the laws of the United States; or
- ii. if the SSO Supplier is providing a Total Exposure Amount Guaranty, the Guarantor of an SSO Supplier must supply such evidence of creditworthiness as to provide Duke

Energy Ohio with comparable assurances of creditworthiness as applicable above for Guarantors of SSO Suppliers that have been organized under the laws of the United States. Duke Energy Ohio may reject such Guarantors that do not meet the creditworthiness requirements.

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

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

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

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

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

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

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

If at any time and from time to time during the Delivery Period, Margin exists with respect to an SSO Supplier, then Duke Energy Ohio on any Business Day may make a Margin Call of such SSO Supplier; provided however that Duke Energy Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable SSO Supplier shall provide to Duke Energy Ohio Margin Collateral, which shall

comprise of cash or a Letter of Credit. The Margin Collateral shall be in the amount equal to the Margin less the amount of any Margin Collateral already posted by the SSO Supplier in which Duke Energy Ohio has a first priority, perfected security interest to secure the obligations of the SSO Supplier under this Agreement and any Other SSO Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

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

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

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

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

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

## **5.9 Acceptable Forms of Security**

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

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

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

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

Notwithstanding anything in this Agreement to the contrary, Duke Energy Ohio may exercise any rights or claims to any collateral posted, delivered or pledged to them under this Agreement, before, after, concurrently with, or to the exclusion of, any other collateral posted, delivered or pledged prior to applying any cash collateral against, or making a drawing under any

letter of credit in respect of, any liabilities of the SSO Supplier hereunder or its Guarantor under the guaranty to Duke Energy Ohio or any of them.

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

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

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

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

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

#### **5.12 No Endorsement of SSO Supplier**

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

## ARTICLE 6

### BILLING, PAYMENT AND NETTING

#### 6.1 Invoice Statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ARTICLE 7**  
**BREACH AND DEFAULT**

**7.1 Events of Default**

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

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

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

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

(d) the Defaulting Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

(a) immediately suspend performance upon written notice to the Defaulting Party; provided, however, that if an SSO Supplier is the Non-Defaulting Party, such SSO Supplier may

only suspend performance if the default of the Defaulting Party constitutes an Event of Default under Sections 7.1(a) or (d);

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

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

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

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

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

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

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

(b) **Settlement Amount.** If the Non-Defaulting Party has declared an Early Termination Date pursuant to Section 7.2(b), the Non-Defaulting Party shall have the right to (i) accelerate all amounts owing between the Defaulting Party and the Non-Defaulting Party and to liquidate and terminate the undertakings set forth in this Agreement as between the Defaulting Party and the Non-Defaulting Party; and (ii) withhold any payments due to the Defaulting Party

under this Agreement pending payment of the Termination Payment. The Non-Defaulting Party will calculate, in a commercially reasonable manner, the Settlement Amount with respect to the Defaulting Party's obligations under the Agreement and shall net the Settlement Amount in the manner provided for in Section 7.3(c).

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

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

determination of Default Damages and payment therefor, the Termination Payment, or any portion thereof, is to be made to the SSO Supplier, Duke Energy Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the SSO Supplier for the period of such retention.

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

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

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

If an SSO Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by Duke Energy Ohio with respect to such SSO Supplier, then Duke Energy Ohio, subject to Legal Authorities, may offer all of the non-defaulting SSO Suppliers the right to assume under this Agreement additional Tranches of SSO Load, subject to further compliance with the creditworthiness provisions of Article 5. If more than one SSO Supplier is interested in assuming the additional Tranches of SSO Load and the Parties are unable to agree on an allocation of such additional Tranches, then Duke Energy Ohio shall utilize a blind lottery process to determine which SSO Suppliers shall serve the additional Tranches of SSO Load. The

provision of any such offer by Duke Energy Ohio to non-defaulting SSO Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by one or more SSO Suppliers of additional Tranches hereunder, such SSO Supplier(s) and Duke Energy Ohio shall execute an amendment to this Agreement modifying Attachment A to reflect the revised SSO Supplier Responsibility Share of the non-defaulting SSO Supplier(s) accepting such offer. An SSO Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume additional Tranches upon the default of another SSO Supplier.

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

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

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

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

### **ARTICLE 8**

#### **REPRESENTATIONS AND WARRANTIES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) at the commencement of the Original Delivery Period, it (i) has obtained all authorizations from any Governmental Authority necessary for it to perform its obligations under this Agreement; (ii) is a member in good standing with PJM; (iii) is qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements; (iv) is qualified as a PJM

“Load Serving Entity;” and (v) has duly obtained all FERC authorization necessary or desirable to make sales of Energy, Capacity, and Ancillary Services at market-based rates within PJM; and

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

## **ARTICLE 9**

### **RISK OF LOSS; LIMITATION OF LIABILITY**

#### **9.1 Risk of Loss**

Title and risk of loss with respect to the SSO Supply shall pass from each SSO Supplier to Duke Energy Ohio when the SSO Supply is delivered to the Delivery Point. As between the Parties, each SSO Supplier shall be deemed to be in exclusive control and possession of the SSO Supply prior to and at the Delivery Point, and Duke Energy Ohio shall be deemed to be in exclusive control and possession of the SSO Supply from the Delivery Point. Each SSO Supplier warrants that it will deliver the SSO Supply to Duke Energy Ohio at the Delivery Point free and clear of all liens, claims and encumbrances arising or attaching prior to the Delivery Point.

#### **9.2 Limitation of Liability**

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

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

## ARTICLE 10

### INDEMNIFICATION

#### 10.1 Indemnification

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

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

or in part by the gross negligence or willful misconduct of the Indemnified Supplier. The Indemnified Supplier may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(c) Any Party that receives notice of any claim, action, or proceeding for which it may seek indemnification under this Section shall promptly notify the indemnitor in writing; provided, however, that the failure to so notify the indemnitor shall not relieve the indemnitor of liability hereunder except to the extent that the defense of such claim, action, or proceeding is prejudiced by the failure to give the notice. The indemnitee shall cooperate fully with the indemnitor in connection with any such litigation or proceeding the defense of which the indemnitor has assumed. No indemnitee may consent to entry of any judgment or enter into any settlement of any claim, action, or proceeding that would give rise to any liability of the indemnitor hereunder without the indemnitor's prior written consent, which consent may not be unreasonably withheld or delayed. If the indemnitor assumes the defense of the claim, action, or proceeding, no compromise or settlement of such claim, action, or proceeding may be effected by the indemnitor without the indemnitee's consent unless (i) there is no finding or admission of any violation of law or the rights of any Person and no effect on any other claims, actions, or proceedings that may be made against the indemnitee and (ii) the sole relief provided is monetary damages and such damages and the associated costs of suit and attorneys' fees are paid in full by the indemnitor.

## **ARTICLE 11**

### **DISPUTE RESOLUTION**

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

If a dispute arises between the Parties relating to this Agreement, a Party shall give the other Party written notice of a dispute which has not been resolved in the normal course of business. Such notice shall include: (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title of the executive who will be representing that Party and of any other person who will accompany the executive. Within five (5) days after delivery of the notice, the receiving Party shall respond with (a) a statement of that Party's position and a summary of arguments supporting such position, and (b) the name and title

of the executive who will represent that Party and of any other person who will accompany the executive. Within ten (10) days after delivery of the initial notice, the executives of both Parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute. If, within twenty (20) days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, then either Party may pursue any remedies available at law or in equity as set forth below.

### **11.2 Formal Dispute Resolution**

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

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

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

## **ARTICLE 12**

### **MISCELLANEOUS PROVISIONS**

#### **12.1 Assignment**

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

substantially all of the assets of Duke Energy Ohio. Under (a)(ii) and (a)(iii) above, Duke Energy Ohio shall be relieved of its obligations upon the assignment and assumption of the assignee, except for those obligations which have arisen prior to the date of assignment.

(b) An SSO Supplier may not assign this Agreement or any rights or obligation hereunder without the prior written consent of Duke Energy Ohio, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, an SSO Supplier may, without the consent of Duke Energy Ohio (i) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues, or proceeds hereof in connection with any financing or other financial arrangements; (ii) transfer or assign this Agreement to any Person having a Minimum Rating; and (iii) transfer or assign this Agreement to any Person succeeding to all or substantially all of the assets of such SSO Supplier. Under (b)(ii) and (b)(iii) above, the assigning SSO Supplier shall be relieved of its obligations upon (x) the assignment and assumption of this Agreement by the assignee and (y) the assignee's satisfaction of the credit requirements set forth in Article 5, except for those obligations which have arisen prior to the date of assignment.

## **12.2 Notices**

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

To Duke Energy Ohio:

**NOTICES & CORRESPONDENCE:**

Duke Energy Ohio  
526 S. Church Street, EC02F  
Charlotte, NC 28202  
Attn: Contract Administration Manager

**PAYMENTS:**

Institution: PNC Bank  
Account No.: 4000600813  
ABA No: 041000124

Contract Administration Manager Contact: Rhonda Johnson  
Email: [Rhonda.Johnson@duke-energy.com](mailto:Rhonda.Johnson@duke-energy.com)  
Phone: (980) 373-2322  
Fax: (980) 373-9908

**INVOICES:**

Attention: Sherry Hardy  
Email: [Sherry.Hardy@duke-energy.com](mailto:Sherry.Hardy@duke-energy.com)  
Fax Number: (980) 373-8721  
Phone Number: (980) 373-8688

**SCHEDULING:**

Attention: Dina Atkins  
Email: [Dina.Atkins@duke-energy.com](mailto:Dina.Atkins@duke-energy.com)  
Fax Number: (704) 382-4014  
Phone Number: (980) 373-3785

**CREDIT:**

Attention: Lewis Camp  
Mail Code: DEC 40C  
Email: [Lewis.Camp@duke-energy.com](mailto:Lewis.Camp@duke-energy.com)  
Fax Number: (980) 373-8640  
Phone Number: (704) 382-5903

**To SSO Supplier:**

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

**12.3 General**

This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement and supersedes all prior communications and proposals (oral or written). This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default. Any provision

declared or rendered unlawful by any applicable Governmental Authority or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.

#### **12.4 Governing Law**

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

#### **12.5 Standard of Review**

Except as provided in Sections 7.4 and 12.6, this Agreement shall not be amended, modified, terminated, discharged or supplanted nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in 12.6, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act, absent the written agreement of the Parties to change any provisions. Other than as expressly permitted in this Agreement, the standard of review for any changes proposed by a Party, a non-party, or the FERC, acting *sua sponte*, shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the “*Mobile-Sierra*” doctrine), as clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*.

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

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

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

## **12.7 Confidentiality**

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

(b) In the event of disclosure pursuant to 12.7(a)(i), Duke Energy Ohio will attempt to notify the SSO Supplier in advance of such disclosure. However, neither Duke Energy Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will be responsible to the SSO Suppliers for any such disclosure and Duke Energy Ohio reserves the right to communicate publicly to third parties any and all information and data submitted as part of this Agreement or Solicitation in any proceedings before FERC, the PUCO and any other regulatory body and the courts, without the prior consent of, or notice to the SSO Suppliers, if Duke Energy Ohio deems such disclosure necessary.

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

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

## **12.8 Taxes**

All present and future federal, state, municipal and other taxes imposed by any taxing authority by reason of the provision of SSO Supply by an SSO Supplier under this Agreement (collectively, the "Taxes") will be the liability of the SSO Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the "Ohio Sales and Use Taxes"), which will be Duke Energy Ohio's responsibility. Should an SSO

Supplier be required to remit any Ohio Sales and Use Taxes directly to the applicable taxing authority, other than Ohio Sales and Use Taxes previously collected by the SSO Supplier on behalf of Duke Energy Ohio, Duke Energy Ohio will defend and indemnify the SSO Supplier for such Ohio Sales and Use Taxes and will pay to the SSO Supplier all such tax amounts upon demand. Each SSO Supplier shall pay all Taxes (other than Ohio Sales and Use Taxes) to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the affected SSO Supplier will, if requested, provide Duke Energy Ohio with valid tax exemption certificates. Should Duke Energy Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes and other Taxes previously collected by Duke Energy Ohio directly from an SSO Supplier), the SSO Supplier will defend and indemnify Duke Energy Ohio and will pay Duke Energy Ohio all such Tax amounts upon demand.

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

## **12.9 Record Retention**

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

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

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

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

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

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

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

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

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

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

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

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

### **12.11 Counterparts**

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

[Signatures appear on next pages]

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

DUKE ENERGY OHIO, INC.

By \_\_\_\_\_

Name: James P. Henning

Title: President

[SSO SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[SSO SUPPLIER]

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

Name:

Title

## ATTACHMENTS

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

ATTACHMENT A

SSO SUPPLIER RESPONSIBILITY SHARE

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

Original Delivery Period: June 1, 2014 through May 31, 2015.

Address for Notice:

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

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

Copy to:

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

Article 5 Notices:

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

[SSO SUPPLIER]

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

ATTACHMENT B  
SEASONAL BILLING FACTOR

The Seasonal Billing Factors are as follows:

June 1 through September 30	1.0524
October 1 through December 31 and January 1 through May 31	0.9704

ATTACHMENT C-1

INDEPENDENT CREDIT REQUIREMENT PER TRANCHE

<u>Month</u>	<u>(\$/Tranche)</u>
Inception through May 2014	\$200,000
June 2014	\$150,000
July 2014	\$150,000
August 2014	\$150,000
September 2014	\$100,000
October 2014	\$100,000
November 2014	\$100,000
December 2014	\$100,000
January 2015	\$50,000
February 2015	\$50,000
March 2015	\$50,000
April 2015	\$50,000
May 2015	\$50,000

## ATTACHMENT C-2

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

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

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

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

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

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

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

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

The Adjusted Forward Market Prices prevailing on the closing day of the Solicitation are used to establish a “market value” for each month during the Original Delivery Period. Table 1 contains hypothetical initial Adjusted On-Peak and Off-Peak Forward Market Prices for a 12-month Original Delivery Period from June 2014 through May 2015. Table 1 shows the hypothetical “market value” of a Tranche, which will be established on the day the Solicitation is completed using the Adjusted Forward Market Prices determined as shown in Table 2.

For each calculation of the Mark-to-Market Exposure Amount, Duke Energy Ohio will determine the Adjusted Forward Market Prices for each month during the Original Delivery Period. Table 3 shows the calculation of an updated “market value” using hypothetical Adjusted Forward Market Prices for each month during the Original Delivery Period assumed to be in effect immediately prior to the Delivery Period for the 12-month Original Delivery Period. The initial market value as of the Solicitation completion date is then subtracted from the updated market value to derive a change in market value. The Mark-to-Market Exposure Amount is then

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

The Volume Adjustment Factor will be determined by recalculating the SSO Load per Tranche reflecting the then current number of Un-Switched Customers and Historical Actual Usage and calculating the ratio of the current SSO Load per Tranche to the initial SSO Load per Tranche. The value for Un-Switched Customers is anticipated to be updated on a monthly basis and the value of Historical Actual Usage is anticipated to be updated in conjunction with each successive auction of SSO Load, but not less than once each calendar year.

**TABLE 1**  
**Market Valuation on Solicitation Closing Date**  
 [VALUES ARE FOR ILLUSTRATION ONLY]

		<u>Forward Market (a)</u>		<u>Initial Tranche Volume (b)</u>		
		<b>Adjusted On-Peak Market Price \$/MWh</b>	<b>Adjusted Off-Peak Market Price \$/MWh</b>	<b>On-Peak MWh</b>	<b>Off-Peak MWh</b>	<b>Mkt Value \$000</b>
Jun-14	\$	43.53	\$ 29.98	2,698	2,238	\$ 185
Jul-14	\$	50.14	\$ 32.95	3,129	3,029	\$ 257
Aug-14	\$	49.97	\$ 32.37	3,012	2,380	\$ 228
Sep-14	\$	40.88	\$ 28.60	1,949	1,876	\$ 133
Oct-14	\$	36.13	\$ 27.33	1,702	1,684	\$ 108
Nov-14	\$	37.22	\$ 28.27	1,866	1,897	\$ 123
Dec-14	\$	39.11	\$ 33.07	2,328	2,461	\$ 172
Jan-15	\$	44.44	\$ 36.42	2,371	2,538	\$ 198
Feb-15	\$	44.24	\$ 36.28	2,287	2,255	\$ 183
Mar-15	\$	41.50	\$ 32.98	2,030	1,898	\$ 147
Apr-15	\$	40.02	\$ 31.03	1,698	1,636	\$ 119
May-15	\$	41.85	\$ 31.76	1,959	2,004	\$ 146

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

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

TABLE 2

Adjusted Market Prices at Solicitation Closing Date

[VALUES ARE FOR ILLUSTRATION ONLY]

	<u>Forward Price (a)</u>				<u>Price Adjustment Factor (b)</u>		Adjusted	
	On-Peak		Off-Peak		On-Peak	Off-Peak	On-Peak	Off-Peak
	Market Price	Off-Peak Market Price	Market Price	Off-Peak Market Price			Market Price	Market Price
	\$/MWh		\$/MWh		On-Peak	Off-Peak	\$/MWh	\$/MWh
Jun-14	\$ 40.65	\$	27.85		1.0708	1.0766	\$ 43.53	\$ 29.98
Jul-14	\$ 47.25	\$	30.25		1.0612	1.0892	\$ 50.14	\$ 32.95
Aug-14	\$ 47.25	\$	30.25		1.0576	1.0701	\$ 49.97	\$ 32.37
Sep-14	\$ 38.90	\$	27.40		1.0508	1.0439	\$ 40.88	\$ 28.60
Oct-14	\$ 35.90	\$	26.75		1.0065	1.0215	\$ 36.13	\$ 27.33
Nov-14	\$ 36.90	\$	27.80		1.0088	1.0168	\$ 37.22	\$ 28.27
Dec-14	\$ 38.50	\$	32.50		1.0159	1.0174	\$ 39.11	\$ 33.07
Jan-15	\$ 43.65	\$	35.65		1.0181	1.0217	\$ 44.44	\$ 36.42
Feb-15	\$ 43.65	\$	35.65		1.0135	1.0176	\$ 44.24	\$ 36.28
Mar-15	\$ 41.00	\$	32.15		1.0123	1.0259	\$ 41.50	\$ 32.98
Apr-15	\$ 39.90	\$	30.40		1.0031	1.0207	\$ 40.02	\$ 31.03
May-15	\$ 40.65	\$	29.65		1.0295	1.0710	\$ 41.85	\$ 31.76

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

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

TABLE 3

Market Valuation Immediately Prior to Start of Delivery Period

[VALUES ARE FOR ILLUSTRATION ONLY]

<u>Forward Market (a)</u>		<u>Initial Tranche Volume (b)</u>				<u>Original Mkt Value on Solicitation Closing Date</u>		<u>Change in Mkt Value</u>	<u>Volume Adjustment Factor</u>	<u>Volume Adjusted Change in Mkt Value</u>
<u>Adjusted On-Peak Market Price</u>	<u>Adjusted Off-Peak Market Price</u>	<u>On-Peak MWh</u>	<u>Off-Peak MWh</u>	<u>Current Mkt Value \$000</u>	<u>Original Mkt Value on Solicitation Closing Date \$000</u>	<u>Change in Mkt Value \$000</u>	<u>Volume Adjustment Factor</u>	<u>Volume Adjusted Change in Mkt Value \$000</u>		
Jun-14 \$ 44.72	\$ 30.64	2,698	2,238	\$ 189	\$ 185	\$ 4	1.0005	\$ 4		
Jul-14 \$ 51.98	\$ 33.28	3,129	3,029	\$ 263	\$ 257	\$ 6	0.9984	\$ 6		
Aug-14 \$ 51.98	\$ 33.28	3,012	2,380	\$ 236	\$ 228	\$ 8	0.9991	\$ 8		
Sep-14 \$ 42.79	\$ 30.14	1,949	1,876	\$ 140	\$ 133	\$ 7	1.0041	\$ 7		
Oct-14 \$ 39.49	\$ 29.43	1,702	1,684	\$ 117	\$ 108	\$ 9	1.0037	\$ 9		
Nov-14 \$ 40.59	\$ 30.58	1,866	1,897	\$ 134	\$ 123	\$ 11	0.9993	\$ 11		
Dec-14 \$ 42.35	\$ 35.75	2,328	2,461	\$ 187	\$ 172	\$ 15	0.9963	\$ 15		
Jan-15 \$ 48.02	\$ 39.22	2,371	2,538	\$ 213	\$ 198	\$ 15	0.9941	\$ 15		
Feb-15 \$ 48.02	\$ 39.22	2,287	2,255	\$ 198	\$ 183	\$ 15	0.9957	\$ 15		
Mar-15 \$ 45.10	\$ 35.37	2,030	1,898	\$ 159	\$ 147	\$ 12	1.0030	\$ 12		
Apr-15 \$ 43.89	\$ 33.44	1,698	1,636	\$ 129	\$ 119	\$ 10	1.0068	\$ 10		
May-15 \$ 44.72	\$ 32.62	1,959	2,004	\$ 153	\$ 146	\$ 7	1.0052	\$ 7		
<b>Total Mark-to-Market Exposure per Tranche (before discounting) (c)</b>									<b>\$</b>	<b>119</b>

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

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

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

## ATTACHMENT D

### [ICT / TOTAL EXPOSURE AMOUNT] GUARANTY OF

\_\_\_\_\_ [Guarantor]

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

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

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

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

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

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

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

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

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

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

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

If to Duke Energy Ohio, to:

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

If to the Guarantor, to:

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

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

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

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

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

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

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

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

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

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

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

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

14. **Choice of Law and Venue.** The Guarantor and Duke Energy Ohio hereby agree that this Guaranty shall be governed by and construed in accordance with the internal laws of the State of Ohio without giving effect to principles of conflicts of law.

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

16. **Miscellaneous.** This Guaranty is the entire and only agreement between the Guarantor and Duke Energy Ohio with respect to the guarantee of amounts payable by the SSO Supplier to Duke Energy Ohio arising out of the Agreement in connection with SSO Supplier's [ICT / Total Exposure Amount]. All representations, warranties, agreements, or undertakings heretofore or contemporaneously made, which are not set forth herein, are superseded hereby.

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

[GUARANTOR]

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

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

ATTACHMENT E

FORM OF SSO SUPPLIER Letter of Credit

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

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

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

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

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

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

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

8. As used herein:

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

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

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

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

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all banking charges, transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.
10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.
13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
15. This original Letter of Credit has been sent to the Beneficiary located at \_\_\_\_\_ (as per Applicant's instructions). Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the Beneficiary.

Very truly yours,

(Bank)

\_\_\_\_\_

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

Name:

Title:

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

Name:

Title:

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

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

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

\_\_\_\_\_ (b) The Applicant has failed to supply a substitute letter of credit thirty (30) days prior to the expiration of this Letter of Credit as required by the Master Standard Service Offer Supply Agreement.

3. The amount to be received by Duke Energy Ohio, Inc. is \$\_\_\_\_\_.

4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

**Annex 2 to Letter of Credit**

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

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

ON [Business Day set forth in Paragraph 5]

PAY TO: Duke Energy Ohio, Inc.

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

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

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

(Bank)

(Address)

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

**Annex 3 to Letter of Credit**

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

Each of the undersigned hereby requests that, in exchange for the above-referenced Letter of Credit, a new letter of credit be issued in the aggregate amount of \$\_\_\_\_\_ (the “New Amount”) and to expire on \_\_\_\_\_(date), but otherwise in the form of the above-referenced Letter of Credit.

Please acknowledge your intention to issue such new letter of credit in the New Amount upon the surrender of the above-referenced Letter of Credit by signing the attached acknowledgment copy hereof and forwarding it to:

[Beneficiary's Address]

Very truly yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

Agreed and Accepted

(Bank)

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

Title:

Date:

APPLICANT NAME

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

Name:

Title:

Date:

**Annex 4 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

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

**Annex 5 to Letter of Credit**

**NOTICE OF EXTENSION**

**OF LETTER OF CREDIT NO. \_\_\_\_\_**

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

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

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

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

Very truly yours,

BANK \_\_\_\_\_

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

Name:

Title:

Date:

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

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

NOTICE OF TRANSFER  
OF LETTER OF CREDIT NO. \_\_\_\_\_

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

To:

[Bank]

[Bank Address]

To Whom It May Concern:

Re: Credit \_\_\_\_\_

Issued by \_\_\_\_\_

Advice No \_\_\_\_\_

For the value received, the undersigned Beneficiary hereby irrevocably transfers to:

\_\_\_\_\_

(Name of Transferee)

\_\_\_\_\_

(Address)

all rights of the undersigned Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very Truly Yours,

Duke Energy Ohio, Inc.

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

Name:

Title:

Date:

The above signature with title as stated conforms to that on file with us and is authorized for the execution of said instruments.

(Name of authenticating party)

\_\_\_\_\_

(Authorized signature of authenticating party)

Name

Title

ATTACHMENT F  
SAMPLE PJM INVOICE

PJM Billing Statement Line Items		
ID #	Resp.	CHARGES
1000	SSO S	Amount Due for Interest on Past Due Charges
<b>1100</b>	<b>EDC</b>	<b>Network Integration Transmission Service</b>
<b>1108</b>	<b>EDC</b>	<b>Transmission Enhancement</b>
<b>1109</b>	<b>EDC</b>	<b>Midwest ISO Transmission Expansion Plan Assessment</b>
1110	SSO S	Direct Assignment Facilities
1120	SSO S	Other Supporting Facilities
1130	SSO S	Firm Point-to-Point Transmission Service
1133	SSO S	Firm Point-to-Point Transmission Service Resale
1140	SSO S	Non-Firm Point-to-Point Transmission Service
1143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
1200	SSO S	Day-ahead Spot Market Energy
1205	SSO S	Balancing Spot Market Energy
1210	SSO S	Day-ahead Transmission Congestion
1215	SSO S	Balancing Transmission Congestion
1218	SSO S	Planning Period Congestion Uplift
1220	SSO S	Day-ahead Transmission Losses
1225	SSO S	Balancing Transmission Losses
1230	SSO S	Inadvertent Interchange
1240	SSO S	Day-ahead Economic Load Response
1241	SSO S	Real-time Economic Load Response
<b>1242</b>	<b>EDC</b>	<b>Day-Ahead Load Response Charge Allocation</b>
<b>1243</b>	<b>EDC</b>	<b>Real-Time Load Response Charge Allocation</b>

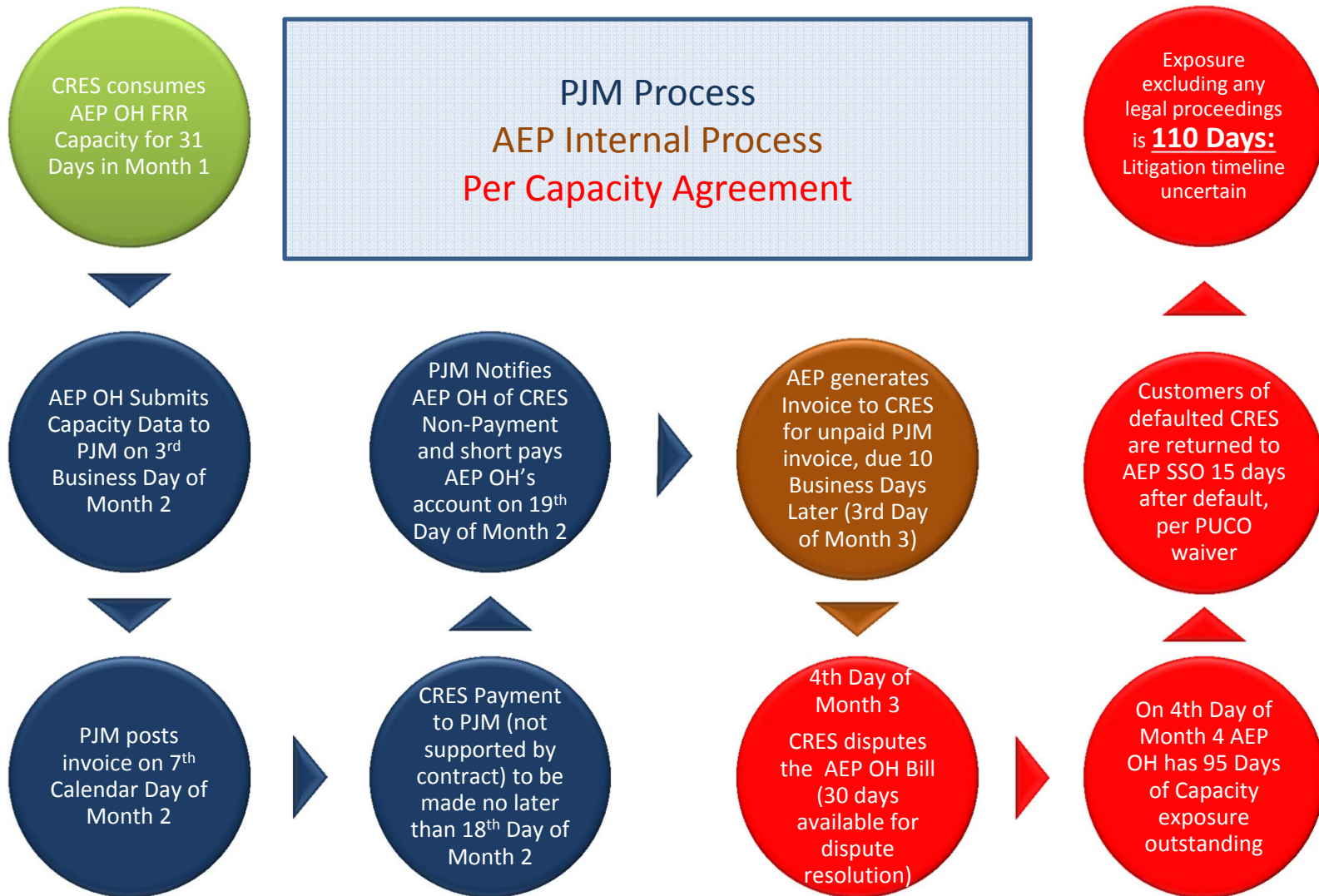
1245	SSO S	Emergency Load Response
1250	SSO S	Meter Error Correction
1260	SSO S	Emergency Energy
1301	SSO S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration
1302	SSO S	PJM Scheduling, System Control and Dispatch Service - FTR Administration
1303	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support
1304	SSO S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration
1305	SSO S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.
1306	SSO S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center
1307	SSO S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset
1308	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration
1309	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration
1310	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support
1311	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration
1312	SSO S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.
1313	SSO S	PJM Settlement, Inc.
1314	SSO S	Market Monitoring Unit (MMU) Funding
1315	SSO S	FERC Annual Charge Recovery
1316	SSO S	Organization of PJM States, Inc. (OPSI) Funding
1317	SSO S	North American Electric Reliability Corporation (NERC)
1318	SSO S	Reliability First Corporation (RFC)
<b>1320</b>	<b>EDC</b>	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
<b>1330</b>	<b>EDC</b>	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
1340	SSO S	Regulation and Frequency Response Service
1350	SSO S	Energy Imbalance Service
1360	SSO S	Synchronized Reserve
1365	SSO S	Day-ahead Scheduling Reserve
1370	SSO S	Day-ahead Operating Reserve
1371	SSO S	Day-ahead Operating Reserve for Load Response
1375	SSO S	Balancing Operating Reserve
1376	SSO S	Balancing Operating Reserve for Load Response
1377	SSO S	Synchronous Condensing
1378	SSO S	Reactive Services
1380	SSO S	Black Start Service
1400	SSO S	Load Reconciliation for Spot Market Energy
1410	SSO S	Load Reconciliation for Transmission Congestion
1420	SSO S	Load Reconciliation for Transmission Losses
1430	SSO S	Load Reconciliation for Inadvertent Interchange
1440	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service
1441	SSO S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund
1442	SSO S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center
1444	SSO S	Load Reconciliation for Market Monitoring Unit (MMU) Funding

1445	SSO S	Load Reconciliation for FERC Annual Charge Recovery
1446	SSO S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding
1447	SSO S	Load Reconciliation for North American Electric Reliability Corporation (NERC)
1448	SSO S	Load Reconciliation for Reliability First Corporation (RFC)
<b>1450</b>	<b>EDC</b>	<b>Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service</b>
1460	SSO S	Load Reconciliation for Regulation and Frequency Response Service
1470	SSO S	Load Reconciliation for Synchronized Reserve
1475	SSO S	Load Reconciliation for Day-ahead Scheduling Reserve
1478	SSO S	Load Reconciliation for Balancing Operating Reserve
1480	SSO S	Load Reconciliation for Synchronous Condensing
1490	SSO S	Load Reconciliation for Reactive Services
1500	SSO S	Financial Transmission Rights Auction
1600	<b>N/A</b>	RPM Auction
1610	<b>N/A</b>	Locational Reliability
1650	<b>N/A</b>	Auction Specific MW Capacity Transaction
1660	<b>N/A</b>	Demand Resource and ILR Compliance Penalty
1661	<b>N/A</b>	Capacity Resource Deficiency
1662	<b>N/A</b>	Generation Resource Rating Test Failure
1663	<b>N/A</b>	Qualifying Transmission Upgrade Compliance Penalty
1664	<b>N/A</b>	Peak Season Maintenance Compliance Penalty
1665	<b>N/A</b>	Peak-Hour Period Availability
1666	<b>N/A</b>	Load Management Test Failure
1670	SSO S	FRR LSE Reliability
1687	SSO S	FRR LSE Schedule 9-5
1688	SSO S	FRR LSE Schedule 9-6
1920	SSO S	Station Power
<b>1930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>1932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
1980	SSO S	Miscellaneous Bilateral
1995	SSO S	PJM Annual Membership Fee
1999	SSO S	PJM Customer Payment Default

<b>PJM Credits</b>		
<b>ID#</b>	<b>Resp.</b>	<b>CREDITS</b>
2100	TO	Network Integration Transmission Service
2106	TO	Non-Zone Network Integration Transmission Service
2108	TO	Transmission Enhancement
2109	TO	Midwest ISO Transmission Expansion Plan Assessment
2110	TO	Direct Assignment Facilities
2120	TO	Other Supporting Facilities
2130	TO	Firm Point-to-Point Transmission Service
2132	SSO S	Internal Firm Point-to-Point Transmission Service
2133	SSO S	Firm Point-to-Point Transmission Service Resale
2140	<b>EDC</b>	Non-Firm Point-to-Point Transmission Service
2142	SSO S	Internal Non-Firm Point-to-Point Transmission Service
2143	SSO S	Non-Firm Point-to-Point Transmission Service Resale
2210	SSO S	Transmission Congestion
2217	SSO S	Planning Period Excess Congestion
2218	SSO S	Planning Period Congestion Uplift
2220	SSO S	Transmission Losses
2240	<b>N/A</b>	Day-ahead Economic Load Response
2241	<b>N/A</b>	Real-time Economic Load Response
2245	<b>N/A</b>	Emergency Load Response
2260	<b>N/A</b>	Emergency Energy
<b>2320</b>	<b>EDC</b>	<b>Transmission Owner Scheduling, System Control and Dispatch Service</b>
<b>2330</b>	<b>EDC</b>	<b>Reactive Supply and Voltage Control from Generation and Other Sources Service</b>
2340	<b>N/A</b>	Regulation and Frequency Response Service
2350	<b>N/A</b>	Energy Imbalance Service
2360	<b>N/A</b>	Synchronized Reserve
2365	<b>N/A</b>	Day-ahead Scheduling Reserve
2370	<b>N/A</b>	Day-ahead Operating Reserve
2371	<b>N/A</b>	Day-ahead Operating Reserve for Load Response
2375	<b>N/A</b>	Balancing Operating Reserve
2376	<b>N/A</b>	Balancing Operating Reserve for Load Response
2377	<b>N/A</b>	Synchronous Condensing
2378	<b>N/A</b>	Reactive Services
2380	<b>N/A</b>	Black Start Service
2420	SSO S	Load Reconciliation for Transmission Losses
2500	SSO S	Financial Transmission Rights Auction
2510	SSO S	Auction Revenue Rights
2600	<b>N/A</b>	RPM Auction
2620	<b>N/A</b>	Interruptible Load for Reliability
2630	<b>N/A</b>	Capacity Transfer Rights
2640	<b>N/A</b>	Incremental Capacity Transfer Rights
2650	<b>N/A</b>	Non-Unit Specific Capacity Transaction
2660	<b>N/A</b>	Demand Resource and ILR Compliance Penalty
2661	<b>N/A</b>	Capacity Resource Deficiency

2662	<b>N/A</b>	Generation Resource Rating Test Failure
2663	<b>N/A</b>	Qualifying Transmission Upgrade Compliance Penalty
2664	<b>N/A</b>	Peak Season Maintenance Compliance Penalty
2665	<b>N/A</b>	Peak-Hour Period Availability
2666	<b>N/A</b>	Load Management Test Failure
<b>2687</b>	<b>EDC</b>	<b>FRR LSE Schedule 9-5</b>
<b>2688</b>	<b>EDC</b>	<b>FRR LSE Schedule 9-6</b>
<b>2930</b>	<b>EDC</b>	<b>Generation Deactivation</b>
<b>2932</b>	<b>EDC</b>	<b>Generation Deactivation Refund</b>
2980	SSO S	Miscellaneous Bilateral

# **ATTACHMENT D**



# **ATTACHMENT E**

## P.U.C.O. NO. 20

TERMS AND CONDITIONS OF  
OPEN ACCESS DISTRIBUTION SERVICE

## 31. SUPPLIER TERMS AND CONDITIONS OF SERVICE

~~4.1~~ CONTENTS

Paragraph	Section
2	Application
3	Customer Choice of Competitive Service Provider
4	Changing Competitive Service Providers
5	Minimum Stay Requirements
6	General Provisions for Competitive Service Providers
7	Transmission Service, <u>RTO Settlements, and Reliability Requirements</u>
8	Supplier Certification with the Commission
9	CRES Provider Registration with the Company
10	CRES Provider Credit Requirements
11	Customer Enrollment Process
12	Confidentiality of Information
13	Losses
14	Meter Service Providers (MSPs)
15	Meter Data Management Agents (MDMAs)
16	Consolidated Billing By a Billing Agent (BA)
17	Consolidated Billing By the Company
18	Metering and Load Profiling
19	Deposits
20	<del>Payments</del> <u>Liability and Indemnification</u>
<del>24</del>	<del>Company's Liability</del>
<del>22</del> <u>21</u>	Competitive Service Provider's Liability
<del>23</del> <u>22</u>	Meter Accuracy and Tests
<u>23</u>	<u>Billing Services</u>
24	<u>Customer Payment Processing and Collections for Consolidated Billing-</u> <del>Corrections</del>
<u>25</u>	<u>CRES Provider Billing Terms and Conditions</u>
<del>25</del> <u>26</u>	<u>Default, Suspension, and Termination</u> <del>or Suspension</del> of a CRES Provider
<u>27</u>	<u>Voluntary Withdrawal by a CRES Provider</u>
<u>28</u>	<u>Dispute Resolution</u>

~~2.~~ APPLICATION

These Supplier Terms and Conditions of Service apply to any person, firm, copartnership, voluntary association, joint-stock association, company or corporation, wherever organized or incorporated, that is engaged in the business of supplying electricity to customers that take distribution service from the Company. These Supplier Terms and Conditions of Service also apply to any such entity that is engaged in the business of providing metering, meter data management and billing services to customers that take distribution service from the Company.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

Issued by  
Pablo Vegas, President  
AEP Ohio

P.U.C.O. NO. 20

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A copy of the Supplier Terms and Conditions of Service under which service is to be rendered will be furnished upon request.

1 ~~3-~~

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Issued: ~~December 22, 2011~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Pablo Vegas, President  
AEP Ohio

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OPEN ACCESS DISTRIBUTION SERVICE~~4.~~~~2.~~ ~~5.~~~~3.~~

## CUSTOMER CHOICE OF COMPETITIVE SERVICE PROVIDER

Customers taking service under the Company's Terms and Conditions of Open Access Distribution Service may elect energy services from a qualified CRES Provider, metering services from a qualified Meter Service Provider (MSP), meter data management services from a qualified Meter Data Management Agent (MDMA) and/or billing services from a qualified Billing Agent (BA). Any MSP, MDMA and/or BA services provided to the customer must be arranged through the CRES Provider who provides energy services to the customer.

Qualifications and other eligibility criteria for such entities are specified herein. CRES Providers, MSPs, MDMAs and BAs are also subject to the rules and certification criteria established by the Commission for such entities as incorporated herein. CRES Providers, MSPs, MDMA and BAs are collectively referred to as Competitive Service Providers (CSPs).

Any customer who desires service from a 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 service from the CSP. 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.

Upon request, customers will be sent an information package containing a summary of the Customer Choice program and a current list of CRES Providers.

The list of CRES Providers will be provided to any customer upon request, all new customers, any customer who is dropped for nonpayment by a CRES Provider, and any customer who returns to the Company's Standard Offer Service due to default by a CRES Provider.

The list of CRES Providers will be posted on the Company's website. The list of CRES Providers will contain the names of those CRES Providers currently registered to enroll and actively seeking residential customers in the Company's service territory.

~~6.~~ ~~4.~~ CHANGING COMPETITIVE SERVICE PROVIDERS

Standard Offer Service will be provided under the Company's standard schedules.

Customers may change CSPs no more than once during any month subject to the provisions below.

Requests to change a customer's CRES Provider must be received by the Company from the new CRES Provider. If the Company receives such a request to change a customer's CRES Provider, the customer shall be notified by the Company concerning the requested change within two (2) business days. If the customer challenges the requested change, the change will not be initiated.

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Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Pablo Vegas, President  
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OPEN ACCESS DISTRIBUTION SERVICE

Residential and General Service—1 customers have seven (7) calendar days from the postmark date on the notice to contact the Company to rescind the enrollment request or notify the Company that the change of CRES Provider was not requested by the customer. General Service—2, 3, and 4 customers must contact the CRES Provider directly to stop the switch. Within two (2) business days after receiving a customer request to rescind enrollment with a CRES Provider, the Company shall initiate such rescission and mail the customer confirmation that such action has been taken.

Any request for initial service for a customer under the Company's open access distribution schedules or subsequent changes to a customer's MSP, MDMA and/or BA must be provided by the CRES Provider that provides energy services to the customer and arranges for such MSP, MDMA and/or BA services on behalf of the customer. The CRES Provider must obtain, and maintain documentation of, authorization from the customer for any changes in MSP, MDMA and/or BA.

The customer shall pay a charge of \$10.00 to the Company for each transaction in which a customer authorizes a change in one or more CSPs. However, this switching charge shall not apply in the following specific circumstances: (a) the customer's initial change to service under the Company's open access distribution schedules and service from a CRES Provider, (b) the customer's CRES Provider is changed involuntarily, (c) the customer returns to service from the customer's former CRES Provider following an involuntary change in CRES Provider, or (d) the customer's former CRES Provider's services have been permanently terminated and the customer must choose another CRES Provider.

In the event that a CSP's services are permanently terminated, and the CSP has not provided for service to the ~~effected~~affected customers, the CSP shall send timely notification to the Company and the ~~effected~~affected customers regarding the termination of such services. Such notification shall describe the process for selecting a new CSP and note that service will be provided by the Company under the Company's Standard Offer Service if a new CSP is not selected.

A customer's return to the Company's Standard Offer Service may be a result of customer choice, CRES Provider default, termination of a CRES Provider contract, opt out or termination of a governmental aggregation program, or CRES Provider withdrawal. A customer will be returned to Standard Offer Service only after the customer fails to choose an alternative CRES Provider.

A customer may contact the Company and request to return to the Company's Standard Offer Service. The return to Standard Offer Service or the applicable Market Based Service schedule shall be conducted under the same terms and conditions applicable to an enrollment with a CRES Provider. The customer will have a seven (7) calendar day rescission period after requesting the Company's Standard Offer Service. Provided the customer has observed the applicable notification requirements and the Company has effectuated the request to return to Standard Offer Service at least twelve (12) calendar days prior to the next regularly scheduled meter reading date, the customer will be returned to Standard Offer Service on the next regularly scheduled meter reading date.

3. ~~7.~~

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2011~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Pablo Vegas, President  
AEP Ohio

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OPEN ACCESS DISTRIBUTION SERVICE~~8.~~~~4.~~ ~~9.~~~~5.~~

## MINIMUM STAY REQUIREMENTS

Large commercial and industrial customers returning to Standard Offer Service must remain on Standard Offer Service for a period of not less than twelve (12) consecutive months. This requirement shall not apply after December 31, 2014.

Customers served under residential and small commercial (GS-1) rate schedules returning to the Company's Standard Offer Service must remain on the Company's Standard Offer Service through April 15 of the following year if that customer received the Company's Standard Offer Service at any time during the period from May 16 to September 15. This requirement shall not apply after December 31, 2014.

A customer returning to the Company's Standard Offer Service as a result of opting out of a governmental aggregation program or as a result of a CRES Provider default as described in Sections 4928.20(D) and 4928.35(D), Ohio Revised Code, will not be subject to the above minimum stay requirements.

Customers of a governmental aggregation where the legislative authority that formed such governmental aggregation has filed written notice with the Commission pursuant to Section 4928.20 (J), Ohio Revised Code, that it has elected not to receive default service from the Company at standard service offer rates may not return to the Company's standard service offer. Such customers shall pay for service at the prevailing market price of power plus costs of the Company's compliance with the alternative energy resource provisions of section 4928.64, Ohio Revised Code.

Any residential or small commercial customer returning to the Company's Standard Offer Service and subject to the minimum stay provision will be given appropriate notice by the Company. The customer will be given at least fourteen (14) days notice that the customer will be returned to the Company's Standard Offer Service subject to the minimum stay period provision above if the customer fails to choose another alternative. Such notice will clearly specify (1) the date by which the customer must choose another CRES Provider or alternative and that the customer will return to the Company's Standard Offer Service if the customer fails to make such choice; (2) the minimum stay period during which the customer will be ineligible to choose another CRES Provider; and (3) any alternatives available to the customer to avoid the minimum stay period.

~~10.~~ ~~6.~~ GENERAL PROVISIONS FOR COMPETITIVE SERVICE PROVIDERS

A CSP must comply with all rules and requirements established by the Commission pertaining, but not limited to, general business practices, information disclosure, customer contract rescission, dispute resolution, customer authorization for switching suppliers, termination of customer contracts, information exchange and supply obligations. A CSP must also agree to comply with all applicable provisions of the Company's open access distribution service schedules, Supplier Terms and Conditions of Service, Terms and Conditions of Open Access Distribution Service, and the applicable Open Access Transmission Tariff. A CSP must also comply with the National Electrical Safety Code if applicable to the service provided by the CSP.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

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A customer is not permitted to have partial Competitive Retail Electric Service. The CRES Provider(s) shall be responsible for providing the total energy consumed by the customer during any given billing month. 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.

~~44-7.~~ TRANSMISSION SERVICE, RTO SETTLEMENTS, AND RELIABILITY REQUIREMENTSa. Transmission Service

Transmission service shall be made available under the terms and conditions contained within the applicable Open Access Transmission Tariff as filed with and accepted by the Federal Energy Regulatory Commission. Either a CRES Provider or the customer may contract with the Transmission Provider for transmission service under the applicable Open Access Transmission Tariff. The Transmission Provider is the applicable regional transmission ~~entity~~ operator (RTO). PJM Interconnection ~~LLC, L.L.C. (PJM)~~ is currently the applicable ~~regional transmission entity~~ RTO. Customers contracting with the Transmission Provider for transmission service and all CRES Providers must complete all required actions relative to membership with the Transmission Provider and be authorized by the Transmission Provider to transact business with regard to transmission service.

The contracting entity or its designee is responsible for scheduling under the ~~tariff~~ applicable Open Access Transmission Tariff. Unless other arrangements have been made, the scheduling entity will be billed by the Transmission Provider for transmission services. The contracting entity must also purchase or provide ancillary services as specified under the applicable Open Access Transmission Tariff.

Billing and payment shall be performed as specified in the applicable Open Access Transmission Tariff. Any remaining unpaid amounts and associated fees for transmission service are the responsibility of the customer.

Failure to obtain sufficient transmission service and ancillary services will result in a suspension of the CRES Provider's registration until resumption of such services by the CRES Provider occurs.

b. RTO Settlements

Except as otherwise provided in this Section 7b, billing for settlements shall be rendered by the Transmission Provider in accordance with the applicable Open Access Transmission Tariff, applicable FERC orders and applicable business practice manuals for functions including but not limited to energy, capacity, energy imbalance service, transmission service, ancillary service and administrative costs.

Meter data collected by the Company shall be used to calculate the quantity of energy actually used by a CRES Provider's customers for a particular energy imbalance period.

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1. Monthly Metered Customers - Data from monthly metered customers is collected corresponding to customers' billing cycles. To reconcile energy mismatches on an hourly basis, the Company shall convert such meter data for customers to equivalent hourly usage using load profiles. Resultant hourly meter level values will be loss adjusted to represent generation level through the application of loss factors as specified in the applicable Open Access Transmission Tariff.
2. Interval Metered Customers - Data from interval metered customers will be collected by the Company on a monthly basis. To reconcile energy mismatches on an hourly basis, the Company will use the actual time interval data. The actual interval metered energy consumption will be expressed at generation level through the application of loss factors as specified in the applicable Open Access Transmission Tariff.
3. Calculation of Load - Load shall be calculated according to the AEP-Ohio CRES Hourly Energy Calculation Process, which shall be posted on the Company's website.
4. Calculation of Capacity Obligation: CRES Provider capacity obligations shall be calculated according to the AEP-Ohio CRES Capacity Obligation Calculation Process, which shall be posted on the Company's website.
5. Transmission Provider Deration of load MWhs - Where applicable, the Company's load shall be derated by the Company for calculation of charges under the applicable Open Access Transmission Tariff.

On a calendar month basis, monthly metered customers' actual usage and hourly metered Customers' actual usage shall be aggregated by the Company to arrive at the total hourly aggregated load for each CRES Provider and submitted to the Transmission Provider in accordance with the applicable Open Access Transmission Tariff and applicable business practice manuals.

Unaccounted for Energy may be determined by comparing the aggregate load of all CRES Providers and the Company at the generation level including losses to the AEP Ohio load less non retail load for each respective hour. The difference may then be allocated to the CRES Provider based on a ratio of each CRES Provider's load to the total load of the CRES Providers and the Company on an hourly basis. The Company may update the method of allocation of Unaccounted For Energy (UFE) as more detailed data becomes available.

Subsequent to the PJM 60-day settlement procedure described in the AEP-Ohio CRES Hourly Energy Calculation Process, PJM's monthly bills to the Company and CRES Provider shall be subject to adjustment for any errors in arithmetic, computation, meter readings or other errors as agreed upon by the Company and the CRES Provider. The Company shall perform calculations to determine the value of reconciliation quantities associated with settlements beyond 60 days and either submit those calculations to PJM for billing purposes or bill the CRES Provider directly.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

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c. Reliability Requirements

~~Provisions for scheduling and imbalance are contained within the applicable Open Access Transmission Tariff.~~

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 regional reliability council or their successor who has authority over the CRES Provider.

~~12.~~\_\_\_\_\_

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Issued: ~~December 22, 2011~~\_\_\_\_\_

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OPEN ACCESS DISTRIBUTION SERVICE8. SUPPLIER CERTIFICATION WITH THE COMMISSION

Suppliers desiring to become CRES Providers must first be certified by the Commission and shall be subject to any certification criteria adopted by the Commission according to Section 4928.08, Ohio Revised Code.

~~13-9.~~ CRES PROVIDER REGISTRATION WITH THE COMPANY

~~CR~~CRES Providers desiring to provide Competitive Retail Electric Service to customers located within the Company's Service Territory must ~~also~~ register with the Company. The following information must be provided in order to register with the Company:

- a. Proof of certification by the Commission, including any information provided to the Commission as part of the certification process. The registration process may be initiated upon receipt by the Company of an application for certification by the Commission. However, the Company will not complete the registration process until proof of certification by the Commission has been provided.
- b. A completed copy of the Company's CRES Provider Registration Application for the State of Ohio, along with a non-refundable \$100.00 registration fee payable to the Company.
- c. ~~After the first year, a~~ \$100.00 annual registration fee payable to the Company, which shall be due July 1 of the first calendar year following the year of initial registration and each calendar year thereafter.
- d. An appropriate financial instrument to be held by the Company against CRES Provider defaults and a description of the CRES Provider's plan to procure sufficient electric energy and transmission services to meet the requirements of its firm service customers.
- e. The name of the CRES Provider, business and mailing addresses, and the names, telephone numbers and e-mail addresses of appropriate contact persons, including the 24-hour emergency contact telephone number and emergency contact person(s).
- f. Details of the CRES Provider's dispute resolution process for customer complaints.
- ~~g. A signed statement by the officer(s) of the CRES Provider committing it to adhere to the Company's Open Access Distribution Schedules, Terms and Conditions of Open Access-~~  
g. A signed statement by the officer(s) of the CRES Provider committing it to adhere to the Company's Open Access Distribution Schedules, Terms and Conditions of Open Access Distribution Service, Supplier Terms and Conditions of Service and any additional requirements stated in any agreement between the CRES Provider and the Company regarding services provided by either party.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

Issued by  
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- h. An ~~Executed EDI Trading Partner~~ executed Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement and completion of EDI testing for applicable transaction sets necessary to commence service. The Company shall perform EDI testing in quarterly flights and include the CRES Provider in the next available flight.
- i. The Company shall approve or disapprove the CRES Provider's registration within thirty (30) calendar days of receipt of complete registration information from the CRES Provider. The thirty (30) day time period may be extended for up to thirty (30) days for good cause shown, or until such other time as is mutually agreed to by the CRES Provider and the Company.

The Company will notify the CRES Provider of incomplete registration information within ten (10) calendar days of receipt. The notice to the CRES Provider shall include a description of the missing or incomplete information.

The Company may reject a CRES registration for any of the following reasons:

- a. The CRES Provider has been rejected by the Company as not being creditworthy.
- b. The Company has provided written notice to the CRES Provider that a registration is incomplete and the CRES Provider has failed to submit a completed registration within thirty (30) calendar days of the notification.
- c. The CRES Provider has undisputed outstanding debts to the Company.
- d. The CRES Provider has failed to comply with payment and billing requirements as specified in these Supplier Terms and Conditions of Service.
- e. The CRES Provider has failed to comply with all applicable requirements of the Transmission Provider Open Access Transmission Tariff for its registration to be accepted as complete.
- f. The CRES Provider has failed to execute an Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement, and/or has not completed EDI testing for applicable transaction sets necessary for the commencement of service.

The Company shall not be required to provide services to a CRES Provider unless the CRES Provider is current in its payment of all charges owed under these Supplier Terms and Conditions of Service, Terms and Conditions of Open Access Distribution Service.

CRES Providers shall be solely responsible for having appropriate contractual or other arrangements with their customers necessary to implement Competitive Retail Electric Service consistent with all applicable laws, Commission requirements, Transmission Provider Open Access Transmission Tariff and these Supplier Terms and Conditions of Service. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Nothing in these Supplier Terms and Conditions of Service is intended to prevent a CRES Provider and a customer from agreeing to reallocate between them any charges that these Supplier Terms and Conditions of Service impose on the CRES Providers, provided that any such agreement shall not change in any way the CRES Provider's obligation to pay such charges to the Company, and that any such agreement shall not confer upon the Company any right to seek recourse directly from the CRES Provider's Customer for any charges owed to the Company by the CRES Providers.

~~Alternative dispute resolution under the provisions of Chapter 4901:1-26 of the Ohio Administrative Code shall be available to CRES Providers and the Company to address disputes and differences between the parties.~~

Customers of a CRES Providers remain bound by the rules and requirements of the applicable Company Tariff under which they receive service from the Company.

~~14.~~ 10. CRES PROVIDER CREDIT REQUIREMENTSDefinitions Used in This Section

"Letter of Credit" means a standby irrevocable letter of credit acceptable to the Company issued by a U.S. bank or financial institution with a minimum "A-" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from S&P or a minimum "A3" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from Moody's, in a form acceptable to the Company.

"Moody's" means Moody's Investors Service, Inc.

"S&P" means Standard and Poor's Rating Services.

a. Credit Application

All CRES Providers must complete the CRES Provider Registration Application for the State of Ohio to be considered for participation in the Company's Choice Program.

b. Determination of Creditworthiness

The Company will apply, on a non-discriminatory and consistent basis, reasonable financial standards to assess and examine a CRES Provider's creditworthiness. These standards will take into consideration the scope of operations of each CRES Provider and the level of risk to the Company. This determination will be aided by appropriate data concerning the CRES Provider, including load data or reasonable estimates thereof, where applicable.

In considering a CRES Provider's creditworthiness, the Company will review whether the CRES Provider has, and maintains, stable, or better, investment grade senior unsecured (un-enhanced) long-term debt ratings from any two of the following three rating agencies: provided, however, that the Company may limit the amount of unsecured credit to be granted to such Certified Supplier if the Company reasonably determines that such limitation is necessary to protect the Company from an unacceptable level of risk.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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AGENCY	SENIOR UNSECURED LONG-TERM DEBT RATINGS
Standard & Poor's	BBB- or higher
Moody's Investors' Services	Baa3 or higher
Fitch	BBB- or higher

The CRES Provider also will provide the Company, for its creditworthiness determination, with its or its parent's most recent independently-audited financial statements, or Form 10K (if applicable), for the last three fiscal years, and its or its parent's most recent quarterly unaudited financial statements or Form 10-Q (if applicable).

The Company shall make reasonable alternative credit arrangements with a CRES Provider that is unable to establish its creditworthiness or with those CRES Providers whose credit requirements exceed their allowed unsecured credit limit. The CRES Provider may choose from any of the following credit arrangements, which must be in an acceptable format and from an acceptable issuer to the Company: a guarantee of payment from a Guarantor who meets the above debt rating requirements; an irrevocable Letter of Credit; a ~~Prepayment Account~~ cash deposit established with the Company; a ~~Surety Bond~~ surety bond, including the Company as a beneficiary; or other mutually agreeable security or arrangement. The alternate credit arrangements may be provided by a party other than the CRES Provider, including one or more ultimate customers. ~~The fact that a guarantee of payment, irrevocable Letter of Credit, Prepayment Account, or Surety Bond is provided by a party other than the CRES Provider shall not be a factor in the determination of the reasonableness of any alternative credit arrangement, as long as such party and the related credit arrangements meet the Company's standard credit requirements.~~ The amount of the security required must be and remain commensurate with the financial risks placed on the Company by that CRES Provider, including recognition of that CRES Provider's performance.

1. Initial Credit Calculation:

Initially, the Company will calculate the amount of the CRES Provider's collateral requirement by multiplying thirty (15) days of 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 wholesale power delivered to the Company's load zone within the RTO, and subtracting therefrom 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 applied until twelve (12) month's history is established. The collateral requirement shall be rounded up to the nearest integral multiple of \$1,000.

2. Ongoing Credit Calculation:

Ongoing, the Company will calculate the amount of the CRES Provider's collateral requirement by multiplying fifteen (15) days of the CRES Provider's actual highest monthly peak and off peak energy usage over a rolling twelve (12) month period times the peak and off peak prices set at the next July forward index prices, as established by a generally accepted industry price index for wholesale power delivered to the Company's load zone within the RTO, and subtracting therefrom the amount of the CRES Provider's allowed unsecured credit limit. The collateral requirement shall be

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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rounded up to the nearest integral multiple of \$1,000. Collateral requirements and credit exposure shall be monitored monthly by the Company. Any CRES Provider whose credit exposure exceeds its credit limit will be required to provide additional collateral within three (3) business days of Company's request.

c. Interest on Cash Deposits

The Company will allow simple interest on cash deposits calculated at the Federal Funds Rate over the time period the cash is on deposit. In cases of discontinuance or termination of services, cash deposits will be returned with accrued interest upon payment of all Charges, guarantees and with deduction of unpaid accounts.

d. On-going Credit Evaluation

The Company reserves the right to review each CRES Provider's creditworthiness at any time. The CRES Provider must provide current financial and credit information. In addition, the CRES Provider may request re-evaluation at any time. It is anticipated that demand, unanticipated market movements and economic reasons will result in exposures nearing or exceeding the prescribed credit limits or collateral originally in place. It is also noted that additional collateral may be required due to a degradation of credit rating or repayment ability of a CRES Provider. Any subsequent review or re-evaluation of a CRES Provider's creditworthiness may result in the CRES Provider being required to post collateral not previously requested. The new, additional or change in collateral requirement will be necessary to enhance, restore or maintain the Company's credit protection. In the alternative, the Company may limit a CRES Provider's level of participation or remove the CRES Provider from further participation in the Company's Choice Program.

e. Financial Obligation—Dispute Resolution

If the CRES Provider disputes the calculation of the amount due, as calculated by the Company, the CRES Provider shall notify the Company not later than the close of business on the business day following the due date. The parties will consult each other in good faith in an attempt to resolve the dispute. If the parties fail to resolve the dispute by the close of 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.

~~The Company will make available its credit requirements upon request. A CRES Provider may appeal the Company's determination of credit requirements to the Commission or seek Staff mediation as to any dispute.~~

If it is determined that the payment shall be less than the amount requested by the Company, the Company shall refund the excess payment plus simple interest calculated at the Federal Funds Rate over the time period the cash is on deposit to the Certified Supplier by the close of business on the business day following receipt of the Commission's or Staff's determination.

~~45-~~11 CUSTOMER ENROLLMENT PROCESS

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

Issued by  
Pablo Vegas, President  
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## a. Pre-Enrollment Customer Information List

Upon request, the Company will electronically provide to any CRES Provider certified by the Commission the most recent Customer Information List. The Company may request the CRES Provider to pay \$150.00 per list provided.

The Company will offer the Customer Information List with updates available ~~quarterly~~ monthly. Once the list has been updated, a CRES Provider may not use a Customer Information List from a prior quarter to contact customers, but CRES Providers shall not be required to purchase subsequent lists.

The Company will provide customers the option to have all the customer's information listed in the section below removed from the Customer Information List. At the same time, the Company will also provide customers with the option to have all information listed below reinstated on the Customer Information List. Customers will be notified of such options quarterly.

The following information will be provided on the Customer Information List for each customer who has not requested that all information be removed from this list:

Customer name

Service address

Service city

Service state and zip code

Mailing address

Mailing city

Mailing state and zip code

Rate schedule under which service  
is rendered

Rider (if applicable)

Load profile reference category

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR.~~ Actual load profile (even for switching).

Issued: ~~December 22, 2011~~ \_\_\_\_\_Effective: ~~January 1, 2012~~ \_\_\_\_\_

Issued by  
Pablo Vegas, President  
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CRES Provider](#)

Meter type (if readily available)

[Whether the service address is set to  
net-metering](#)Interval meter data indicator (if readily  
available)

Budget bill / PIPP indicator

Meter reading cycle

Most recent twelve (12) months of historical  
consumption data (actual energy usage and  
demand, Peak Load Contribution and  
Network Service Peak Load, if available).  
[\(provided in values of four or more digits\)](#)[Total loss factor value](#)

The Company will provide the Customer Information List by either a compact disc or on a designated website. The information will be prepared and distributed in a uniform and useable format that allows for data sorting. Customers participating in the percentage of income payment plan (PIPP) program will be coordinated exclusively through the PIPP program administered by the Ohio Department of Development.

## b. CRES Provider Requests for Customer Information

CRES Providers certified by the Commission may request historical interval meter data through a Direct Access Service Request (DASR) after receiving the appropriate customer authorization. The interval meter data will be transferred in a standardized electronic transaction. The CRES Provider will be responsible for the incremental costs incurred to prepare and send such data.

## c. Direct Access Service Requests

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO,  
11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2011~~ \_\_\_\_\_Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Enrollment of a customer is done through a DASR, which may be submitted only by a CRES Provider.

DASRs will be effective at the end of the customer's next regularly scheduled meter reading date provided that the DASR is received by the Company at least twelve (12) calendar days before the next meter reading date.

All DASRs will be submitted to the Company no more than thirty (30) calendar days prior to the scheduled meter reading date when the CRES Provider desires the switch to occur, unless otherwise agreed upon by the parties. The Company will process all valid DASRs and send the confirmation notice to the customer within two (2) business days. Simultaneous with the sending of the confirmation notice to the customer, the Company will electronically advise the CRES Provider of acceptance. Notice of rejection of the DASR to the CRES Provider shall be sent within one business day, if possible, but in no event later than four (4) calendar days, and include the reasons for the rejection. The customer has seven (7) calendar days from the confirmation notice to cancel the contract without penalty. If the customer cancels the contract, the Company shall send a drop notice to the CRES Provider and the previous CRES Provider will continue to serve the customer under the terms and conditions in effect prior to submission of the new DASR.

DASRs will be processed on a "first in" priority basis based on the received date, and using contract date as the tie-breaker. Any subsequent DASRs received within the same billing cycle will be rejected and returned to the CRES Provider who submitted the DASR.

To receive service from a CRES Provider, a customer must have an active service account with the Company. After the service account is active, a CRES Provider may submit a DASR as described herein.

d. Government Aggregation Customer Information List

Upon request, the Company will provide to any governmental aggregator certified by the Commission a Government Aggregation Customer Information List. The Company will provide the Government Aggregation Customer Information List by compact disc or other electronic medium that the Company deems appropriate. The information will be prepared and distributed in a uniform and useable format that allows for data sorting. ~~The governmental aggregator will pay the Company \$500.00 per list provided.~~

The list will include information for all customers residing within the governmental aggregator's boundaries based upon the Company's records, including an identification of customers who are currently in contract with a CRES provider or in a special contract with the Company. The list will also include those customers that elect to have their information removed from the Pre-Enrollment Customer Information List. The Company cannot guarantee that the list will include all of the customers residing within the aggregator's boundaries, nor can the Company guarantee that all the customers shown on the list reside within the aggregator's boundaries. In addition to all information included on the Pre-Enrollment Customer Information List, the Government Aggregation Customer Information List shall also include the customer's Service Delivery Identifier (SDI).

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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The Company will notify CRES Providers in advance of any proposed changes to the actual format or file containing its Government Aggregation Customer Information List.

~~16-~~12. CONFIDENTIALITY OF INFORMATION

All confidential or proprietary information made available by one party to the other in connection with the registration of a CRES Provider with the Company and/or the subsequent provision and receipt of service under these Supplier Terms and Conditions of Service, including but not limited to load data, and information regarding the business processes of a party and the computer and communication systems owned or leased by a party, shall be used only for purposes of registration with the Company, receiving or providing service under these Supplier Terms and Conditions of Service and/or providing Competitive Retail Electric Service to customers in the Company's service territory. Other than disclosures to representatives of the Company or the CRES Provider for the purposes of enabling that party to fulfill its obligations under these Supplier Terms and Conditions of Service or for the CRES Provider to provide Competitive Retail Electric Service to customers in the Company's service territory, a party may not disclose confidential or proprietary information without the prior authorization and/or consent of the other party.

The CRES Provider shall keep all customer-specific information supplied by the Company confidential unless the CRES Provider has the customer's written authorization to do otherwise.

~~17-~~13. LOSSES

~~Either the CRES Provider or the~~The Transmission Provider may provide both transmission and distribution losses as required to serve customers at various delivery voltages. ~~If a CRES Provider arranges to provide transmission losses under the provisions of the applicable Open Access Transmission Tariff, then the CRES Provider must also arrange for the appropriate distribution losses.~~ Customers served at transmission and subtransmission voltages require no additional losses other than the losses specified in the applicable Open Access Transmission Tariff. Customers served at primary distribution voltage require 2.0% additional average losses of amounts received by the Company for delivery to the customer. Customers served at secondary distribution voltage require 5.4% additional average losses of amounts received by the Company for delivery to the customer.

~~18-~~14. METER SERVICE PROVIDERS (MSPs)

Meters shall be provided and maintained by the Company unless the customer selects a MSP to provide metering services. Unless otherwise specified, such meters shall be and remain the property of the Company. MSPs desiring to provide service to customers in the Company's Service Territory must submit a written application to the Company in order to provide metering services for ownership, installation, inspection and auditing. Such application shall include the following:

- ~~a-~~a. A \$500.00 initial registration fee payable to the Company and a \$100.00 annual registration fee thereafter.

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Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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- ~~b.-b.~~ Proof of creditworthiness to the Company, including an appropriate financial instrument to be held by the Company and used in the event of damages as a result of the MSP's actions.
- ~~c.-c.~~ The name of the MSP, business and mailing addresses, and the names, telephone numbers and e-mail addresses of appropriate contact persons, including the 24-hour emergency contact telephone number and emergency contact person(s).
- ~~d.-d.~~ Details of the MSP's dispute resolution process for customer complaints.
- ~~e.-e.~~ A signed statement by the officer(s) of the MSP committing it to adhere to the Company's open access distribution schedules, Terms and Conditions of Open Access Distribution Service, Supplier Terms and Conditions of Service and any additional requirements stated in any agreement between the MSP and the Company regarding services provided by either party.
- ~~f.-f.~~ Proof of an electrical subcontractor's license issued by the Ohio Department of Commerce, including the name of the person or entity to which the license has been issued, license number and expiration date. Certification may require an employee to be a licensed electrician in the service area where work is performed.
- ~~g.-g.~~ Description of the (a) applicant's electric meter installation, maintenance, repair and removal experience, (b) applicant's training and experience regarding electrical safety and (c) educational and training requirements in electrical work and safety that the MSP will require from its employees before they are permitted to install, maintain, repair or remove electric meters or metering devices.

The MSP must also agree to the following standards for metering services:

- ~~a.-a.~~ The Company must approve the type of any and all metering equipment to be installed. Such metering and practices must conform with the Company's metering service guides and standards and must comply with the Meter Testing provision of the Company's Terms and Conditions of Open Access Distribution Service. A written agreement between the Company and the MSP shall specify those categories or types of meters for which the MSP is certified to install/remove or test/maintain.
- ~~b.-b.~~ The MSP shall allow the Company to disconnect the MSP's meter, or promptly perform a disconnection as notified by the Company where a customer's service is subject to disconnection due to non-payment of distribution charges. The Company shall be permitted to audit the meter accuracy of MSP meters and to disconnect or remove a MSP's meter when necessary to maintain the safe and reliable delivery of electrical service. The MSP is responsible to acquire the right of ingress and egress from the customer to perform its functions. When necessary, the MSP must also seek written approval and secure from the customer any keys necessary to access locked premises.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

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~~e.~~ c. The MSP is responsible for detecting and immediately notifying the Company of hazardous conditions noted at the customer's electrical service and meter installation.

~~d.~~ d. The MSP is responsible for recording and notifying the Company of conditions detected on the customer's premises which present potential for injury.

~~e.~~ e. The MSP shall be responsible for conforming to Company standards for sealing and resealing meters as well as properly resetting and sealing demand measurement devices.

~~15.~~ 15. METER DATA MANAGEMENT AGENTS (MDMAs)

MDMAs desiring to provide service to customers in the Company's Service Territory must submit a written application to the Company in order to provide any meter reading or data management services. Such application shall include the following:

~~a.~~ a. A \$100.00 annual registration fee payable to the Company.

~~b.~~ b. Proof of creditworthiness to the Company, including an appropriate financial instrument to be held by the Company and used in the event of damages as a result of the MDMA's actions.

~~c.~~ c. The name of the MDMA, business and mailing addresses, and the names, telephone numbers and e-mail addresses of appropriate contact persons, including the 24-hour emergency contact telephone number and emergency contact person(s).

~~d.~~ d. Details of the MDMA's dispute resolution process for customer complaints.

~~e.~~ e. A signed statement by the officer(s) of the MDMA committing it to adhere to the Company's Open Access Distribution Schedules, Terms and Conditions of Open Access Distribution Service, Supplier Terms and Conditions of Service and any additional requirements stated in any agreement between the MDMA and the Company regarding services provided by either party.

~~f.~~ f. Description of the (a) applicant's experience in meter reading, data validation, editing and estimation, and other data management activities and (b) educational and training requirements that the MDMA will require from its employees before they are permitted to perform such meter reading, data validation, editing and estimating and other data management activities.

The MDMA must also agree to the following standards for meter data management services:

~~a.~~ a. All billing meters shall be read each month, unless otherwise mutually agreed to by the MDMA and the Company.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2011~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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~~b.~~b. Meter data shall be read, validated, edited and transferred pursuant to Commission and Company approved standards. The Company and the MDMA must agree to common data formats for the exchange of validated data.

~~c.~~c. The Company shall have reasonable access to the MDMA data server.

~~d.~~d. The MDMA shall provide to the appropriate entities reasonable and timely access to meter data as required for billing, settlement, scheduling, forecasting and other functions.

~~e.~~e. The MDMA shall retain the most recent twelve (12) months of data for any customer who elects the MDMA to perform meter reading and data management services. Such data must be retained for a minimum period of 36 months and must be released upon request to either the customer or an entity authorized by the customer.

~~f.~~f. Within five (5) business days after the installation of a meter, the MDMA must confirm with the Company that the meter and meter reading system are working properly and that the billing data is valid.

~~g.~~g. No more than 10% of the individual meters read by the MDMA shall contain estimated data, with no single account being estimated more than two consecutive months. Estimated data must be based on historical data and load profile data as provided by the Company.

~~h.~~h. The MDMA shall comply with the Company's time requirements for the posting of validated meter reading data on the MDMA server.

~~i.~~i. The MDMA is responsible for acquiring the right of ingress and egress from the customer to perform its functions. When necessary, the MDMA must also seek written approval and secure from the customer any keys necessary to access locked premises.

~~j.~~j. The MDMA is responsible for identifying suspected cases of the unauthorized use of energy and shall report such concerns to the customer's CRES Provider, Transmission Provider and the Company. The CRES Provider shall resolve such concerns and pursue the appropriate legal response and all necessary parties shall support this action. The customer's supplier of meter services (MSP or the Company) shall make the necessary meter corrections and/or repairs, and then notify the MDMA who shall correct the previous meter usage data and provide to the appropriate entities such data as required for billing, settlement, scheduling, forecasting and other functions. Any billing corrections shall be consistent with the provisions of the Company's Terms and Conditions of Service for Open Access Distribution Service.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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~~k-k~~ k-k The MDMA is responsible for detecting and immediately notifying the Company of hazardous conditions noted at the customer's electrical service and meter installation.

~~l-l~~ l-l The MDMA is responsible for recording and notifying the Company of conditions detected on the customer's premises which present potential for injury.

~~m-m~~ m-m The MDMA shall be responsible for conforming to Company standards for sealing and resealing meters as well as properly resetting and sealing demand measurement devices.

If no entity satisfies the above criteria, 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.

The Company may conduct periodic workshops with CRES Providers to solicit input regarding additional data elements that may be appropriate for inclusion in the electronic system used to transmit usage information.

~~16-16~~ 16-16 CONSOLIDATED BILLING BY A BILLING AGENT (BA)

BAs desiring to provide service to customers in the Company's Service Territory must submit a written application to the Company in order to provide consolidated billing related services to customers. Such application shall include the following:

~~a-a~~ a-a A \$100.00 annual registration fee payable to the Company.

~~b-b~~ b-b Proof of creditworthiness to the Company, including an appropriate financial instrument to be held by the Company and used in the event of damages as a result of the BA's actions.

~~c-c~~ c-c The name of the BA, business and mailing addresses, and the names, telephone numbers and e-mail addresses of appropriate contact persons, including the 24-hour emergency contact telephone number and emergency contact person(s).

~~d-d~~ d-d Details of the BA's dispute resolution process for customer complaints.

~~e-e~~ e-e A signed statement by the officer(s) of the BA committing it to adhere to the open access distribution schedules, Terms and Conditions of Open Access Distribution Service, Supplier Terms and Conditions of Service and any additional requirements stated in any agreement between the BA and the Company regarding services provided by either party.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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~~f.~~ f. Description of the (a) applicant's training and experience in billing collections, payment services and billing inquiries and (b) educational and training requirements for BA employees regarding such services.

~~g.~~ g. The Company and the BA must agree to common data formats for the exchange of billing data.

A written agreement between the Company and the BA shall specify the bill format regarding transmission and distribution related services. Regardless of such format, each customer's bill rendered by the BA shall show charges for generation, transmission, distribution and other services covered under the particular bill and also indicate the provider of each service.

The BA must agree to be subject to the same provisions as the Company, including requirements as specified in the Company's Open Access Distribution Schedules, Terms and Conditions of Open Access Distribution, Ohio Revised Code, and all other legislative and regulatory mandates regarding billing. The BA is responsible for electronically transmitting funds received from the customer for charges from Company for distribution service, together with the associated customer account data, on the same day as receiving said funds. The BA assumes responsibility for outstanding distribution service charges from the Company and is responsible for providing payment in full of all charges for distribution service from the Company by the due date in accordance with terms of the applicable open access distribution schedule. Failure of the BA to transmit such funds by the due date will result in late charges applied to the affected customer's account according to the provisions of the customer's open access distribution schedule. If the BA fails to provide payment to the Company by the due date of the next bill, the Company will thereafter directly bill the customer for distribution service from the Company. In addition, the financial instrument will be forfeited to the extent necessary to cover bills due and payable to the Company.

~~17.~~

~~18.~~

~~19.~~ 17. CONSOLIDATED BILLING BY THE COMPANY

Upon request, pursuant to Section 23 of these Supplier Terms and Conditions of Service, the Company will offer rate-ready or bill-ready Company-issued consolidated bills to customers receiving service from a CRES Provider upon ~~execution of an appropriate agreement between the CRES Provider and the Company~~ designation of the rate-ready or bill-read option, as applicable, in the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement. Company-issued consolidated billing will include budget billing as an option. The CRES Provider must electronically provide all information in a bill-ready format.

At the Company's discretion, any customer receiving Company consolidated billing with a CRES Provider billing arrearage of more than 60 days may be switched back to the Company's Standard Offer Service and will not be permitted to select a new CRES Provider until the arrearage is paid.

~~If the customer's CRES Provider defaults, the Company reserves the right to retain payments collected from the customer and to apply such payments to the Company's charges.~~

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All customers with a maximum monthly billing ~~demands~~demand of 200 kW or greater ~~for during~~ the most recent twelve (12) months shall install a dedicated phone line, or other mechanism deemed to be sufficient by the Company to enable interval metering, and be interval metered. The customer or the customer's CRES Provider may request an interval meter for customers with maximum monthly billing demands less than 200 kW.

The cost and repair of any interval metering facilities installed by the Company to comply with this requirement or as a result of such request shall be paid by the customer. The customer shall make a one-time payment for the metering facilities at the time of installation of the required facilities, or at the customer's option, up to 24 consecutive equal monthly payments reflecting an annual interest charge as determined by the Company, but not to exceed the cost of the Company's most recent issue of long-term debt. If the customer elects the installment payment option, the Company shall require an initial payment equal to 25% of the total cost of the metering facilities. Any necessary replacement of the meter where repair is not possible will be performed at cost, based upon premise installation and load requirements.

In addition, the customer shall pay a net charge to cover the incremental cost of operation and maintenance and meter data management associated with such interval metering as follows: Charges are for service performed on a Company installed standard interval meter.

Service Performed During Normal Business Hours	Charge (\$)
Connect phone line to meter at a time other than the initial interval meter installation	57.00
Perform manual <u>and non-analog</u> meter reading	43.00
Check phone line and perform manual meter reading due to communication loss	47.00
Replace surge protector	119.00
<del>Replace interval board</del>	<del>121.00</del>
Replace modem board	210.00
<del>Replace interval and modem boards</del>	<del>260.00</del>

The customer or the customer's CRES Provider may select a meter from the Company's approved equipment list. The customer or the customer's CRES Provider may communicate with the meter for the purpose of obtaining usage data, subject to the Company's communication protocol. The customer is responsible for providing a dedicated analog telephone line phone line, or other mechanism deemed to be sufficient by the Company, for purposes of reading the meter.

~~A customer that is required to have interval metering and provide a dedicated analog telephone line must have both the interval meter and dedicated analog telephone line installed and operational before a CRES Provider may serve such customer. Any DASR submitted by a CRES Provider will be rejected if this requirement is not met. If an interval meter is required, the Customer~~

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must approve a work order for an interval meter installation before the Company will accept an enrollment DASR. For Customers that will have an interval meter installed for the requested service, service may begin, assuming the Company has an approved work order for the interval meter installation. A Company load profile will be used for settlement. Consumption meter reads will continue to be used for billing. This will be the approach during the period between the Customer's request for an interval meter and the Company's installation of such a meter.

All load profiling shall be performed by the Company. Sample data and customer specific interval metering, when available, will be used in the development of the total load profile for which a CRES Provider is responsible for providing generation and possibly arranging transmission services. Such data shall be provided to the BA or other entities as required for monthly billing.

The Company, acting as a designated agent for the CRES Provider, will supply hourly load data to Transmission Provider, for the CRES Provider. The Company will provide this data in accordance with the Transmission Provider Open Access Transmission Tariff, including estimates when necessary. The Company will be held harmless for any actions taken while performing agent responsibilities. Meter data collected by the Company shall be used to calculate the quantity of energy actually consumed by a CRES Provider's end-use customers for a particular period. Such collection shall occur at the time of an end-use customer's monthly meter read. Thus, in order to measure the energy consumed by all end-use customers on a particular day, at least one month is required for data collection. It is the responsibility of the CRES Provider to understand this process.

Data from 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.

~~24-19.~~ DEPOSITS

Security for the payment of bills for service from a CRES Provider will be governed, as specified in Chapter 4901:1-21-07 of the Ohio Administrative Code, which is herein incorporated by reference as it is from time to time amended.

~~20.~~ LIABILITY AND INDEMNIFICATION~~22.~~ PAYMENTS~~a.~~ General Limitation on Liability.

~~Partial payment from a customer shall be applied to the various portions of the customer's total bill in the following order: (a) past due distribution, Standard Offer Service generation and transmission charges, (b) past due CRES Provider charges, (c) current CRES Provider charges, (d)~~

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~~current distribution, Standard Offer Service generation and transmission charges, and (e) other past due and current non-regulated charges.~~

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. 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 to a CRES Provider for any consequential, indirect, incidental, special, ancillary, punitive, exemplary, or other damages, including lost profits, lost revenues, or other monetary losses arising out of any errors or omissions.

**23. COMPANY'S LIABILITY****b. Limitation on Liability for Service Interruptions and Variations.**

~~In addition to the Company's liability as set forth in the Company's Terms and Conditions of Open Access Distribution Service, the following shall apply. The Company shall use reasonable diligence in delivering The Company does not guarantee continuous, regular and uninterrupted supply of energy to the customer, but does not guarantee continuous, regular and uninterrupted service. The Company may, without liability, interrupt or limit the supply of service for the 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 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 control. The Company shall not be liable for damages in case such service should be interrupted or fail by reason of failure of the customer's CRES Provider to provide appropriate energy to the Company for delivery to the customer. The Company shall not be liable for any damages, financial or otherwise, to any of the customer's CSPs resulting from an interruption of service.~~

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

Except as provided in the Company's Supplier Terms and Conditions of Service, 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 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 is negligent in switching or failing to switch a customer.

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

The Commission approval of the above language in respect to the limitation of liability arising from the Company's negligence 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.

~~Filed pursuant to Orders dated December 14, 2011 in Case Nos. 11-346-EL-SSO, 11-348-EL-SSO, 11-351-EL-AIR, and 11-352-EL-AIR~~

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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 grossly negligent or willful act of omission of the Company

~~Meters shall be provided and maintained by the Company unless the customer selects a MSP to provide metering services. Unless otherwise specified, such meters shall be and remain the property of the Company.~~

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.

~~24-21.~~ COMPETITIVE SERVICE PROVIDER'S LIABILITY

In the event of loss or injury to the Company's property through misuse by, or negligence of, the CRES Provider, MSP, MDMA or BA, or the CSP's agents and employees, the CSP shall be obligated and shall pay to the Company the full cost of repairing or replacing such property.

Unless authorized by the Company to do so, a CSP and its agents and employees shall not tamper with, interfere with or break the seals of meters or other equipment of the Company installed on the customer's premises, and, under any circumstances, the CSP assumes all liability for the consequences thereof. The CSP agrees that no one, except agents and employees of the Company, shall be allowed to make any internal or external adjustments to any meter or other piece of apparatus which belongs to the Company.

~~25-22.~~ METER ACCURACY AND TESTS

A MSP's meter performance levels, testing methods and test schedules must comply with all standards specified by the Company. Such details shall be specified in the agreement between the Company and the MSP.

When metering is provided by an MSP, the Company may, at its discretion, direct meter-related inquiries from the customer to the MSP for response, or the Company may send notification to the MSP to perform a test of the accuracy of its meter. At the MSP's request, or should the MSP fail to perform a customer-requested test in a timely manner, the Company, at its discretion, may agree to test the accuracy of a meter supplied by the MSP. Regardless of the test results, the MSP shall pay to the Company a flat amount equal to the Company's current average cost of performing such meter tests. Such test will be conducted using a properly calibrated meter standard.

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The Company, at its discretion, may perform a test of the accuracy of a meter supplied by the MSP at any time. If the meter fails to perform at the accuracy standards set forth in the Company's Terms and Conditions of Open Access Distribution Service, the MSP will be responsible to remedy the accuracy of the meter, and to pay to the Company a flat amount equal to the Company's current average cost of performing such meter tests.

~~26-23.~~ BILLING ~~CORRECTIONS~~ SERVICESa. Billing Options.

A CRES Provider must select a billing option for each of its customer accounts. The billing options are limited to the following: (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. Nothing in these Supplier Terms and Conditions of Service shall require the Company to bill customers manually. Thus, if the CRES Provider is offering price plans that are not considered by the Company as standard rates, the Company will provide the CRES Provider with sufficient meter data on a timely basis so that the CRES Provider can bill the customer directly under the separate billing method or can opt for Company Consolidated and Bill-Ready Billing. The billing option must be selected by the time the CRES Provider completes EDI testing. If the Company inaccurately applies the usage information to the rates approved by the CRES Provider for Company Consolidated and Rate-Ready Billing, the CRES Provider shall notify the Company immediately and the Company shall make a correction in a succeeding billing period. The CRES Provider is responsible for receiving and resolving all customer rate disputes involving charges for services received from the CRES Provider. The Company may provide input to customer rate dispute processes to the extent necessary. From and after the date of termination of Company Consolidated and Rate-Ready Billing or Company Consolidated and Bill-Ready Billing, the Company shall have no further obligation beyond presenting the CRES Provider's charges for services rendered and to collect and remit payments to the CRES Providers on charges presented to the customer prior to such date of termination.

b. Billing Cycle.

Current Company practice is to render bills regularly at monthly intervals, but bills may be rendered more or less frequently at the Company's option. Rate values stated for direct application to regular monthly billing periods will be adjusted when the time elapsed between billings is substantially greater or less than a month.

c. Generation Resource Mix.

CRES Providers are responsible for providing a Generation Resource Mix statement to their own customers in accordance with Commission requirements.

d. Setting Up Certified Suppliers' Rates.

CRES Providers using the Consolidated and Rate-Ready Billing option must furnish specific rate information to the Company in a format acceptable for the Company's billing system. The CRES

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Provider will then be required to authorize the Company to begin billing, using the new rate, before enrolling any customers on that rate.

1. The Company will provide all Commission certified and Company enrolled CRES Providers with system requirements and record layouts needed to perform this function.
2. The CRES Provider will be responsible for creating and verifying the rate information that the Company will use to calculate and bill the CRES Provider's charges.
3. The approved rate information must be in production within the Company's billing system before any customers may be enrolled under that rate. In production means installed in and approved by the Company's billing system and the CRES Provider. New rates must be entered at least six days prior to the effective date, and the new rate must be in effect for the entire bill period.

Timetable for Setting up Certified Suppliers' Rates.

1. The Company defines standard rates as falling into one of following rate types:
  - a. a percentage discount from Price To Compare (PTC)
  - b. a fixed dollar amount
  - c. a monthly customer charge
  - d. a fixed rate per KWH
  - e. a fixed rate per KW
  - f. a flat rate/fixed monthly other than customer choice
  - g. a configurable stepped rate with KWH usage ranges
  - h. a seasonal rate
2. The Company will have five calendar days to set up and system test any standard rates other than those under the Percentage-off Rate option and fifteen days to set up standard rates under the Percentage-off Rate option.
3. Within three (3) business days after the Company receives the approval of rates from the CRES Provider, the rates will be placed in production in the Company's billing system and will be available for billing.

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4. When the rates are in the Company's billing system and are available for billing, the CRES Provider may register on the EDI customer accounts it wants to be billed on the new rate.
5. All customer enrollments received before the rate is in production will be rejected.

Electronic Transmission of Customer Billing Data.

1. If the CRES Provider chooses to have the Company bill for the customer's electric commodity usage under the Company Consolidated and Rate-Ready Billing option, the Company will provide usage and charges in standard electronic format.
2. If the CRES Provider chooses the Company Consolidated and Bill-Ready Billing option, the Company will provide usage in a standard electronic format and the CRES Provider will provide the Company with the Certified Supplier's charges in a standard electronic format.

e. Company Consolidated and Rate-Ready Billing.The following business rules will apply to the Company's Consolidated and Rate-Ready Billing Option:

1. The Company shall calculate and present charges on the next bill generated for the customer for Competitive Retail Electric Services. The CRES Provider assumes the responsibility for the rate supplied for each customer as validated from the Rate Management Portal.
2. Within three (3) business days of the meter read date, the Company shall electronically transmit the usage and billing information for the CRES Provider's customers to the CRES Provider.
3. The Company shall present charges on the next bill generated for the customer unless one or more of the following conditions apply: 1) the CRES Provider and the customer was terminated over 60 days before; 2) the Company no longer presents a bill to the customer because of a change in CRES Provider and billing option. If none of these exemptions apply, the Company will present the CRES Provider's charges on the next two consecutive scheduled billings after the relationship between the CRES Provider and the customer terminates.
4. In the event any CRES Provider's charges are not included on a Company Rate-Ready Billing for any reason, the only obligation the Company shall

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have is to include those charges on the next monthly bill unless one or more of the exempting conditions exists as described in the above paragraph. The Company shall not cancel/rebill any billing in which the CRES Provider submitted an incorrect rate code or validated an incorrect rate on the Rate Management Portal.

5. The Company will charge hourly for administrative and technical support to institute program modifications associated with the implementation of consolidated billing on non-standard rates requested by the CRES Provider and reviewed and approved by the Company. A high level estimate of the work shall be provided and agreed upon in advance. The fixed rate for program modifications necessitated by a request for Consolidated and Rate-Ready Billing shall be \$95 per hour.
6. The Company shall reimburse the CRES Provider for all charges collected on behalf of the CRES Provider within three (3) business days following receipt of the customer's payment, when possible, but at least every two weeks. The Company will continue to bill for previous balances due the CRES Provider on the bill as long as the relationship between the CRES Provider and the customer exists, and for the two scheduled billing periods after the relationship terminates. If no payments are received from the customer after the Company has presented charges for these two scheduled billing periods, all unpaid balances, regardless of age, due the CRES Provider, will be electronically transmitted by the Company via an EDI 248 write off transaction to the CRES Provider. No payments will be forwarded to the CRES Provider after the acknowledgement of the receipt of such a transaction.

f. Company Consolidated and Bill-Ready Billing.

The following business rules will apply to the Company's Consolidated and Bill-Ready Billing Option:

1. Within three (3) business days of receiving usage information for an account in a standard electronic format from the Company, the CRES Provider will provide the Company, in bill-ready format, the CRES Provider's charges for the account in a standard electronic format for presentation on the Company's current invoice to the customer.
2. The Company shall present charges on the next bill generated for the customer unless one or more of the following conditions apply: (1) the CRES Provider and the customer was terminated over 60 days before; (2) the Company no longer presents a bill to the customer because of a change in CRES Provider and billing option. If none of these exemptions apply, the Company will present the CRES Provider's charges on the next two

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consecutive scheduled billings after the relationship between the CRES Provider and the customer terminates.

3. The charges received from the CRES Provider by the Company in standard electronic format for each account will contain no more than twenty charge amounts with twenty associated charge descriptions.
4. Charge descriptions will be no longer than eighty characters each (including punctuation and spaces), and charge amounts will not exceed twelve characters each (including spaces, dollar sign, decimal, and, if applicable, negative sign).
5. If a CRES Provider submits a charge description(s) longer than fifty characters, the Company will wrap the charge description(s) to the next character line on its invoice. The corresponding charge amounts will appear in a column to the right of where each charge description ends.
6. If wrapping causes charge descriptions to exceed available lines, each charge description will be truncated and will be printed on the Company's current invoice with the corresponding charge amount appearing in a column to the right of each charge description.
7. If a CRES Provider submits more than twenty charge amounts for an account, the Company will reject the entire submission for the account via a standard electronic format.
8. The Company will allow up to eight lines on its invoice to display the details of the CRES Provider's charges as follows:
  - a. The Company will display the CRES Provider's name and phone number.
  - b. The charge descriptions and charge amounts submitted by the CRES Provider will be displayed.
  - c. The Company will sum the charge amounts submitted by the CRES Provider and display the total on the line following the last charge description submitted by the CRES Provider.
  - d. In situations where the CRES Provider receives revised usage information for an account from the Company in a standard electronic format, the Company will provide an additional line on its invoice for the total amount of each month of cancelled charges it receives from the CRES Provider in a standard electronic format. The Company will display the dollar amount of the cancelled charges, provided that the twelve character charge amount limit is

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not exceeded, on an additional line for each month of cancelled charges. The CRES Provider's corrected charges, submitted to the Company in a standard electronic format, will be displayed on the Company's invoice as described in parts i) through iv) above for each month of corrected charges. CRES Providers will not include cancelled charges within the same standard electronic transaction where corrected charges are submitted to the Company.

9. Customer payments for CRES Provider charges will be remitted by the Company to the appropriate CRES Provider, subject to the payment provisions in Section 24 of these Supplier Terms and Conditions of Service.

10. Within two (2) business days of any date on which the CRES Provider electronically transmits bill-ready charges to the Company, the Company shall transmit to the CRES Provider, via an EDI transaction 824, notice of rejected charges showing, by SDI, those CRES Provider charges that could not be posted to the specific customer's SDI for bill presentment and explaining why those charges could not be so posted by the Company. The CRES Provider shall correct or modify the charges and resubmit them to the Company and such charges will appear on the next Company consolidated bill presented to the customer. In the event any CRES Provider's charges are not included on a Company consolidated billing, for any reason, the only obligation the Company shall have is to include those charges on the next monthly bill unless one or more of the exempting conditions exist as described paragraph 2 of this subsection.

f. Special Messages.

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 to its end-use customers beginning at least ninety days prior to the effective date of the abandonment and continue to provide notice on all subsequent billing statements until the service is abandoned. 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.

h. Financial Obligation – Dispute Resolution.

If the CRES Provider disputes the calculation of the amount due, as calculated by the Company, the CRES Provider shall notify the Company not later than the close of business on the business day following the due date. The parties will consult each other in good faith in an attempt to resolve the dispute. If the parties fail to resolve the dispute by the close of business on the business

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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 Commission Staff mediation as to any dispute.

If it is determined that the payment shall be less than the amount requested by the Company, the Company shall refund the excess payment plus interest calculated at the lower of the average of the Federal Reserve Lending Rate over the time period the cash is on deposit or 4.5% annually to the CRES Provider by the close of business on the business day following receipt of the Commission's or Commission Staff's determination.

j. Billing Corrections

Any correction of bills due to a meter registration error must be coordinated with the other entities utilizing the billing data which is in error. Any entity which detects an error in billing data shall promptly notify the MDMA or the Company if it is performing the function of the MDMA. The MDMA shall then correct any necessary data and provide to the appropriate entities such data as required for billing, settlement, scheduling, forecasting and other functions. Any billing corrections under this paragraph shall be consistent with the provisions of the Company's Terms and Conditions of Open Access Distribution Service.

k. Customer Load Reports

Requests from the CRES Provider to the Company for customer load data will be submitted to the Company and provided back to the CRES Provider using standard electronic format. Requests for manually prepared interval load data reports will be provided at a charge of \$50 to the CRES Provider.

24. CUSTOMER PAYMENT PROCESSING AND COLLECTIONS FOR CONSOLIDATED BILLING

Where the Company acts as the billing agent for the CRES Provider, the Company shall reimburse the CRES Provider for all charges collected on behalf of the CRES Provider within three (3) business days following receipt of the customer's payment, when possible, but at least every two (2) weeks. The Company will continue to bill for previous balances due the CRES Provider on the bill as long as the relationship between the CRES Provider and the customer exists, and for the two (2) scheduled billing periods after the relationship terminates. If no payments are received from the customer after the Company has presented charges for these two (2) scheduled billing periods, all unpaid balances, regardless of age, due the CRES Provider, will be electronically transmitted by the Company via an EDI 248 write off transaction to the CRES Provider in accordance with the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement. No payments will be forwarded to the CRES Provider after the acknowledgement of the receipt of this transaction.

If the customer's CRES Provider defaults, the Company reserves the right to retain payments collected from the customer and to apply such payments to the Company's charges.

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Issued: ~~December 22, 2014~~ \_\_\_\_\_

Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Partial payment from a customer shall be applied to the various portions of the customer's total bill in the following order: (a) past due CRES Provider charges; (b) past due distribution, Standard Offer Service generation and transmission charges, (c) current distribution, Standard Offer Service generation and transmission charges, (d) current CRES Provider charges, (e) other past due and current non-regulated charges.

25. CRES PROVIDER BILLING TERMS AND CONDITIONS

Current Company practice is to render bills to the CRES Provider regularly at monthly intervals, but bills may be rendered more or less frequently at the Company's option. Rate values stated for direct application to regular monthly billing periods will be adjusted when the time elapsed between billings is substantially greater or less than a month.

A CRES Provider shall make payment for charges incurred on or before the due date shown on the bill. The due date shall be determined by the Company and shall not be less than three (3) business days from the date of transmittal of the bill.

27-26. DEFAULT, SUSPENSION, AND TERMINATION ~~OR SUSPENSION~~ OF A CRES PROVIDERa. Default.

A CRES Provider is in default of its obligations under the Company's Customer Choice Program if any one or more of the following occurs:

1. The CRES Provider fails to perform any material obligation under these Supplier Terms and Conditions of Service;
2. The CRES Provider fails to fully pay an invoice from the Company within three (3) business days following the due date of the invoice.
3. The CRES Provider's credit exposure exceeds the unsecured credit limit or the Company's current collateral enhancement requirement by 5% or more and the CRES Provider has failed to comply with the Company's request for adequate security or adequate assurance of payment within three (3) business days of the Company's request.
4. The Commission has decertified the CRES Provider or otherwise declared it ineligible to participate in the Ohio Customer Choice Program or the Company's Customer Choice Program.
5. The CRES Provider's action or inaction has or will jeopardize the operational integrity, safety, or reliability of the Company's transmission or distribution system.

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6. The CRES Provider or the performing services on behalf of the CRES Provider, through actions or inactions, becomes in default of any agreement with or requirement of PJM.
7. The CRES Provider misuses the Company Consolidated and Bill-Ready Billing option by incorrectly using the name of the Company or the name of one of the Company's affiliates in a charge description or otherwise using this billing option in a misleading or defamatory manner.
8. The CRES Provider voluntarily withdraws from the Company's Customer Choice Program without providing at least ninety calendar days notice to the Company.
9. The CRES Provider files a voluntary petition in bankruptcy; has an involuntary petition in bankruptcy filed against it; is insolvent; has a receiver, liquidator or trustee appointed to take charge of its affairs; has liabilities that exceed its assets; or is otherwise unable to pay its debts as they become due.

b. Notice of Suspension or Termination.

Notwithstanding any other provision of ~~this Tariff~~ these Supplier Terms and Conditions of Service or ~~any agreement between the Company and the CRES Provider~~ the Electric Distribution Utility/Competitive Retail Electric Service Provider Agreement, in the event of ~~a default by the CRES Provider~~, the Company shall serve a written notice of such default ~~in~~ providing reasonable detail and ~~with a proposed remedy to~~ on the CRES Provider ~~and, with a copy contemporaneously provided to~~ the Commission. On, or after, the date the default notice has been served, the Company may file with the Commission a written request for authorization to terminate or suspend ~~the service agreement between the Company and~~ to the CRES Provider. Except for default due to ~~non-delivery failure by the CRES Provider to deliver Competitive Retail Electric Service~~, if the Commission does not act within ten (10) business days ~~upon~~ after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the eleventh ~~(11<sup>th</sup>)~~ business day after receipt of the request by the Commission. If the default is due to ~~non-delivery, and if failure by the CRES Provider to deliver Competitive Retail Electric Service and~~ the Commission does not act within five (5) business days ~~upon~~ after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the sixth ~~(6<sup>th</sup>)~~ business day after receipt of the request by the Commission. Terminations or suspensions shall require authorization from the Commission.

c. Notices

The Company shall send notices pursuant to this section by e-mail, fax, overnight mail, or hand delivery to the Commission and Staff at the Commission's offices. The Company shall notify all Commissioners, the Chief of Staff, the Director of the Consumer Services Department, the Director of the Utilities Department, the Director of the Legal Department, and the Chief of the Attorney General's Public Utilities Section. The Company shall send the notice to the address and fax number provided by the CRES Provider in its service agreement with the Company.

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In the event of suspension, the CRES Provider shall not be permitted to enroll any new End-use customers in the Company's Customer Choice Program. During the period of suspension, the CRES Provider shall continue to serve its existing end-use customers.

e. Effect of Termination on CRES Provider's End-use Customers

In the event of termination, the CRES Provider's end-use customers shall be returned to the Company's Standard Offer Rate effective on each end-use customer's next Meter Read Date after the date of termination.

f. Effect of Termination on CRES Provider

The CRES Provider shall not be permitted to enroll any new end-use customers in the Company's Customer Choice Program unless it re-registers in the Company's Customer Choice Program, pursuant to the requirements of Section 9 of these Supplier Terms and Conditions of Service.

27. VOLUNTARY WITHDRAWAL BY A CRES PROVIDER

A CRES Provider that withdraws from Competitive Retail Electric Service and fails to provide at least ninety (90) days electronic notice of said withdrawal shall reimburse the Company for any of the following costs associated with the withdrawal:

- a. mailings by the Company to the CRES Provider's customers to inform them of the withdrawal and their options;
- b. non-standard/manual bill calculation and production performed by the Company;
- c. CRES Provider data transfer responsibilities that must be performed by the Company;
- d. charges, costs, or penalties imposed on the Company by other parties resulting from CRES Provider's non-performance; and
- e. Any and all other out-of-pocket expenses incurred by the Company as a result of the withdrawal.

28. DISPUTE RESOLUTION

Alternative dispute resolution shall be offered to both CRES Providers and the Company as a means to address disputes and differences between CRES Providers and the Company. Alternative Dispute Resolution shall be conducted in accordance with the provisions of Chapter 4901:1-26 of the Ohio Administrative Code. To the extent the dispute involves terms and conditions under the

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[Transmission Provider Open Access Transmission Tariff, dispute resolution procedures provided in the Transmission Provider Open Access Transmission Tariff shall apply.](#)

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## 32. CODE OF CONDUCT

1. The Company shall not release any proprietary customer information (e.g., individual customer load profiles or billing histories) to an affiliate, or otherwise, without the prior authorization of the customer, except as required by a regulatory agency or court of law.
2. The Company shall make customer lists, which include name, address and telephone number, available on a nondiscriminatory basis to all nonaffiliated and affiliated certified retail electric competitors transacting business in its service territory, unless otherwise directed by the customer. This provision does not apply to customer-specific information, obtained with proper authorization, necessary to fulfill the terms of a contract, or information relating to the provision of general and administrative support services.
3. Employees of the Company's affiliates shall not have access to any information about the Company's transmission or distribution systems (e.g., system operations, capability, price, curtailments, and ancillary services), that is not contemporaneously and in the same form and manner available to a nonaffiliated competitor of retail electric service.
4. The Company shall treat as confidential all information obtained from a competitive supplier of retail electric service, both affiliated and nonaffiliated, and shall not release such information unless a competitive supplier provides authorization to do so, or unless the information was or thereafter becomes available to the public other than as a result of disclosure by the company.

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Effective: ~~January 1, 2012~~ \_\_\_\_\_

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Description	mark up of supplier tariff 7-21-13
Rendering set	standard

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

Summary: Comments -Reply Comments electronically filed by Mr. Steven T Nourse on behalf of Ohio Power Company