

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Ohio Power Company to Establish</b>	)	
<b>a Competitive Bidding Process for</b>	)	<b>Case No. 12-3254-EL-UNC</b>
<b>Procurement of Energy to Support its</b>	)	
<b>Standard Service Offer</b>	)	

**APPLICATION**

Ohio Power Company d/b/a AEP Ohio (“AEP Ohio” or the “Company”) submits this application to establish a competitive bidding process (CBP) for procurement of energy to support its standard service offer (SSO). In support of its application, AEP Ohio states the following:

1. AEP Ohio is an electric utility as that term is defined in §4928.01(A)(11), Ohio Rev. Code.
2. AEP Ohio is an electric utility operating company subsidiary of American Electric Power Company, Inc.
3. In Part II.B.7 of the Opinion and Order issued August 8, 2012 in Case No. 11-346-EL-SSO et al. (*ESP II*), the Commission adopted a requirement for three energy auctions during the term of the ESP II to achieve: (i) 10% slice-of-system procurement of SSO energy load for delivery commencing six months after the final order in the corporate separation case (Case No. 12-1126-EL-UNC), (ii) 60% slice-of-system procurement of SSO energy load for delivery commencing June 1, 2014, and (iii) 100% slice-of-system procurement of SSO energy load for delivery commencing January 1, 2015 through May 31, 2015.

4. After termination of the ESP II term, the Commission agreed that the Company should competitively procure both energy and capacity effective June 1, 2015.
5. In order to facilitate the energy auctions, the Commission ordered AEP Ohio to pursue establishment, through a filing by December 31, 2012, of an open and transparent auction process after first conducting a stakeholder process to solicit input.
6. The Company did conduct an open and transparent stakeholder process prior to submitting this CBP proposal. The Company initiated the stakeholder process through a letter in the *ESP II* docket dated September 7, 2012, which was served on the parties of record in that proceeding. AEP Ohio conducted three live workshops (with optional call-in participation) among stakeholders on October 25, November 8 and November 9, as well as a conference call discussion on November 27. In conjunction with each meeting, the Company circulated documents detailing its proposals and allowed the opportunity for verbal and written input. There was significant attendance and participation for each of the meetings, peaking with nearly 50 attendees at the October 25 meeting. The Company fully considered all of the issues raised during the stakeholder process in developing this Application.
7. The scope of the stakeholder process was focused on the “step one” energy auction procurement process and not on the “step two” issues relating to reflecting in retail rates the cost of purchased energy at the

wholesale auction clearing price. The “step two” retail rate issues associated with the energy auctions are separate and distinct from the wholesale auction and those issues remain pending on rehearing in the *ESP II* cases. *See e.g. ESP II*, AEP Ohio Application for Rehearing at Prop. I; Ohio Energy Group Application for Rehearing at Props. 4 and 5. Consequently, AEP Ohio plans to subsequently incorporate the retail rate matters into this CBP proceeding after the Commission issues its rehearing decision.<sup>1</sup> Specifically, upon receiving the Commission’s rehearing decision regarding those retail rate issues, AEP Ohio plans to file an amendment or supplement to this Application in a manner consistent with the decision, which will detail the Company’s recovery of auction-related costs through retail rates. This Application is contingent upon full and timely recovery in retail rates of all costs associated with the energy-only auctions, including costs incurred in planning and conducting the auction (*e.g.*, auction manager costs, consultant costs, *etc.*) as well as costs incurred in implementing the resulting energy supply contracts (*e.g.*, energy purchase price, costs of default and contingency plans, balancing charges, *etc.*).

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<sup>1</sup> As a related matter, the Commission has stated its intention to open a separate docket to address rate mitigation issues relating to rates being set by auction. *See ESP II*, Opinion and Order at 15-16. AEP Ohio presumes that docket will be addressed in conjunction with the Commission’s rehearing decision relating to the “step two” retail rate issues. These matters further support the Company’s proposal, discussed below, to establish a comment process now for the “step one” CBP issues.

8. The details associated with AEP Ohio's proposed energy-only wholesale procurement are reflected in detailed exhibits to this Application:

Exhibit A – Bidding Rules for the Auctions Under the Competitive Bidding Process of Ohio Power Company (CBP Rules)

Exhibit B – Rules and Protocols for Participation by Associated Bidders (Associated Bidder Protocols)

Exhibit C – Master Energy Supply Agreement (MESA)

Exhibit D – Communication Protocols for Ohio Power Company Competitive Bidding Process Auctions (Communication Protocols)

9. While most of the features and provisions of the Company's CBP proposal and documents are similar to those utilized by Duke Energy Ohio and the FirstEnergy operating companies, differences are needed in order to reflect the unique energy-only scope of the AEP Ohio auctions. Further, both stakeholders and the electric distribution utility can improve the existing process based on experience and additional information. Thus, while the Company looked to recent successful CBP processes as a starting point, consistent with the Commission's directive, the proposed CBP does reflect some differences for the foregoing reasons. Key features of the documents comprising the exhibits are described below.

10. The CBP Rules are found in Exhibit A to this Application. The CBP Rules provide an overview of the auction process, a description of the product that is consistent with the MESA, the quantities for each auction and the general timing of each auction as well as an indicative schedule for the first auction, recognizing that such schedule is contingent upon

receipt of final Commission orders.<sup>2</sup> The CBP Rules then describe the application and qualification processes, the bidding process and the post auction process. In describing the bidder application process, the CBP Rules set forth the certifications that CBP bidders will be required to make to ensure the effectiveness and competitiveness of the auction as well as required pre-bid security. The CBP Rules specify the Contingency Plans should an auction not be fully subscribed and/or an energy supplier defaults. Costs of these Contingency Plans will be deemed prudent and passed through AEP Ohio's retail rates. Finally, the CBP Rules specify how associated bidders and confidential information will be handled.

11. The Associated Bidder Protocols are found in Exhibit B to this Application. These protocols provide detailed standards governing when associated parties apply to participate in a CBP auction and provide specific protocols that will be followed when associated entities submit Part 1 and/or Part 2 Applications to participate in a CBP auction for AEP Ohio.
12. The MESA is found in Exhibit C to this Application. The MESA fully describes the energy product and sets forth obligations of both energy-only auction suppliers and AEP Ohio. In addition to establishing the

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<sup>2</sup> For example, the delivery period for the initial 10% energy auction is currently projected to commence on August 1, 2013. As referenced in the indicative schedule set forth in Article II.2 of the CBP Rules, the August 1, 2013 projection is based on receiving a final order in this CBP Application case at least 90 days in advance of the delivery date as well as receiving final orders in both the *ESP II* and Corporate Separation (Case No. 12-1126-EL-UNC) by the end of January 2013, which is six months prior to commencement of the delivery period for the initial energy auction.

obligations of each party to the contract, the MESA contains provisions that describe the delivery point, the scheduling protocol, payments and settlements, events of default and default remedies, credit and margining terms and standard miscellaneous provisions. Two significant elements of the MESA are the delivery point and the determination of the energy delivery schedule. The delivery point for energy is specified as the AEP Load Zone established in PJM. This is currently the point at which all load in AEP Ohio's service territory is priced. At a time in the future it may be appropriate to request that PJM establish an AEP Ohio Aggregate pricing point that would be used to settle AEP Ohio load.<sup>3</sup> However, for purposes of this Application, use of the established AEP Load Zone as the delivery point provides parity with load supplied by CRES providers and maximizes price information that is available to prospective bidders. The second significant feature of the MESA is the determination of the energy purchase schedule. Consistent with PJM processes, AEP Ohio calculates energy load for shopping and non-shopping (SSO) load on the day after flow and provides those amounts to PJM. The total load is then adjusted as more data becomes available from meter readings and is finalized or reconciled 60 days later. PJM then adjusts settlements to reflect the 60-day load reconciliation, which is typically the final determination of load

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<sup>3</sup> There is significant lead time required for notification to PJM for the creation of a new pricing point (which would serve as the delivery point under the MESA). More specifically, for each successive PJM Planning Year, PJM requires notice as of the preceding October in order to change the delivery point. For example, the Company would have needed to notify PJM by October 2012 if it were going to change the delivery point for the 2013-2014 Planning Year.

for each CRES provider and for SSO load. PJM's reconciliation only applies to load for which an entity is responsible. Under the energy-only auction structure, AEP Ohio remains the Load Serving Entity and load serving responsibility is not transferred to energy-only auction suppliers. Those suppliers provide AEP Ohio with slice-of-system shaped scheduled energy deliveries which AEP Ohio will treat as purchased power energy. Hence, PJM's 60-day reconciliation cannot apply to the scheduled energy deliveries; it only applies to load for which energy responsibility has been transferred. The slice-of-system energy schedule will, thus, be established in PJM's InSchedule system based on the SSO share as determined using the best available data on the day after flow. To the extent that information within the 60-day PJM reconciliation period would show that the actual load is materially different, there would be financial settlement between AEP Ohio and each energy-only auction supplier.

13. The Communication Protocols are found in Exhibit D to the Application and address communications (i) between AEP Ohio and its affiliates, and (ii) between and among the Auction Manager, the general public and media, AEP Ohio, the PUCO, PUCO Staff and PUCO Consultant. The Communication Protocols specify that all communications with bidders will be through the Auction Manager. The Communication Protocols explicitly define what comprises confidential information. The Communication Protocols are defined to achieve the following four objectives:

- To establish a fair and equitable process for all bidders by ensuring all bidders have equal access to the same information necessary to evaluate the bidding opportunity and to prepare their bids in a timely manner.
- To take all reasonable precautions that any information generated by the auction process that could harm the competitive position of bidders or AEP Ohio, if released, is kept confidential.
- To take all reasonable precautions that confidential information is provided only to those persons to whom it is deemed necessary for the conduct and management of the auction process.
- To ensure that information that, if released, could harm the competitiveness of future competitive bidding processes, is kept confidential from all entities, including bidders.

14. AEP Ohio plans to evaluate the CBP after conducting each of the energy auctions, through the opportunity for input and dialogue with the auction manager and stakeholders. If there are best practices or other improvements to be made that involve changes to the CBP, the Company will timely pursue formal approval from the Commission through an Application in order to resolve such matters in advance of the next energy auction. The Commission can establish an appropriate process for considering such an amendment, upon such a proposal being advanced.
  
15. AEP Ohio recommends that National Economic Research Associates, Inc. d/b/a NERA Economic Consulting (NERA) be retained as the auction manager. As reflected in Exhibit E, NERA is eminently qualified to conduct energy auctions and has an extensive and unblemished track record for doing so. Further, NERA was the Auction Manager for the original Ohio SSO auction conducted in 2004 for the FirstEnergy operating companies. Moreover, NERA has facilitated the stakeholder



process described herein and is most familiar with the details relating to the energy auctions to be implemented for AEP Ohio.

16. Regarding the process to be used in this Application proceeding, AEP Ohio recommends a notice-and-comment process. Depending on the timing of the Commission's *ESP II* rehearing decision, the Commission may wish to establish a comment process for considering the "step one" auction issues now with the "step two" retail rate issues to be considered subsequently as part of a separate round of comments. Because time is of the essence for finalizing the CBP and conducting the auction process and since the retail rate issues are separate and distinct from the wholesale auction issues, AEP Ohio recommends that the Commission establish an expedited comment process for the proposals currently contained in this Application. In doing so, the Commission should assure stakeholders up front that the retail rates issues will be taken up separately after the rehearing decision is issued – and order commenters to hold their comments about the retail rate issues until that second phase of comments (especially since those matters are pending on rehearing and have already been fully briefed under the Commission's rules). Of course, if the *ESP II* rehearing decision is forthcoming very soon, the Commission could potentially adopt a procedural schedule after issuance of the rehearing decision that would allow consolidated comments for both the wholesale auction issues and the retail rate process – after also leaving enough time for the Company to amend or supplement its Application as referenced

above in Paragraph 7. In any case, AEP Ohio submits that a comment process is adequate to fully consider and decide the issues presented in this Application. Should the Commission deem it necessary and appropriate to take written testimony and/or conduct an evidentiary hearing in order to adjudicate this case, however, AEP Ohio requests a litigation schedule designed to produce a final order in this case at least 90 days in advance of the delivery date for the first procurement.

WHEREFORE, based on the information and exhibits submitted with this filing, the Commission should adopt the Company's CBP proposals as reflected in Exhibits A through E, following a comment process to consider approval of the Company's application.

Respectfully submitted,



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# **EXHIBIT A**

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**Bidding Rules for the Auctions  
Under the Competitive Bidding Process  
of Ohio Power Company**

**December 21, 2012**

**NERA**  
Economic Consulting

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## ARTICLE I. Introduction

### I.1. Background

- I.1.1. The merger of Columbus Southern Power Company (“CSP”) and Ohio Power Company (“OPCo”) closed on December 31, 2011. The surviving Electric Distribution Utility (“EDU”) is Ohio Power Company, which will be referred to as “AEP Ohio”.
- I.1.2. On March 30, 2012, AEP Ohio filed an Electric Security Plan (“ESP II”) that proposed a competitive bidding process (“CBP”) for energy-only auctions that would transition AEP Ohio to procuring 100% of the energy needs of its Standard Service Offer (“SSO”) customers by the start of 2015 (Case No. 11-346-EL-SSO and Case No. 11-348-EL-SSO). SSO customers are customers who take retail generation service from AEP Ohio.
- I.1.3. The Public Utilities Commission of Ohio (“Commission”) issued an Opinion and Order regarding AEP Ohio’s ESP II on August 8, 2012 (“ESP II Decision”). The ESP II Decision specifies the following elements of the CBP:
- AEP Ohio will procure energy for its SSO customers. AEP Ohio will not procure capacity or any other services required to serve SSO customers through the CBP.
  - AEP Ohio will procure energy for its SSO customers through the CBP on a slice-of-system basis. The supply to be procured will be divided into a number of tranches and each tranche will represent a fixed percentage of the hourly energy requirements of SSO customers during the delivery period.
  - There will be three (3) delivery periods, each ending on May 31, 2015. The first delivery period will begin six (6) months after AEP Ohio receives final orders from the Commission in both the ESP II and corporate separation dockets. The second delivery period will begin on June 1, 2014. The third delivery period will begin on January 1, 2015.
  - The percentage of supply procured for each of the three (3) delivery periods will be 10% (beginning six (6) months after AEP Ohio receives final orders from the Commission in both the ESP II and corporate separation dockets), an additional 50% (beginning June 1, 2014), and a final 40% (beginning January 1, 2015).
- I.1.4. AEP Ohio has retained NERA Economic Consulting to serve as Auction Manager. The Auction Manager can be contacted by email to [AEP-CBP@nera.com](mailto:AEP-CBP@nera.com).

### I.2. Overview

- I.2.1. These Bidding Rules for the Auctions Under the Competitive Bidding Process of Ohio Power Company (“CBP Rules”) describe the process and requirements for participation in the slice-of-system, energy-only auctions to be held under the CBP approved by the Commission as part of AEP Ohio’s ESP II. Bidders also need to be familiar with other documents for the auctions including the Master Energy Supply Agreement, the Part 1 Application, the Part 2 Application, and the Communications Protocols. All documents are posted to the CBP website [www.AEPOhioCBP.com](http://www.AEPOhioCBP.com) as they become available. This website is the main source of information for bidders in the auctions as well as for other stakeholders.

- 1.2.2. Four auctions will be held under the CBP:**
- The first auction will procure 10% of the hourly energy requirements of AEP Ohio's SSO customers ("Energy Load" as further defined and described in Section III.1 below). The delivery period will begin six (6) months after AEP Ohio receives final orders from the Commission in both the ESP II and corporate separation dockets and will end on May 31, 2015. There will be ten (10) tranches available at the auction, each representing 1% of Energy Load.
  - The second and third auctions will each procure 25% of Energy Load for a delivery period beginning June 1, 2014 and ending on May 31, 2015. Each tranche in an auction will represent a fixed percentage of the Energy Load.
  - The fourth auction will procure 40% of Energy Load for a delivery period beginning January 1, 2015 and ending on May 31, 2015. Each tranche in this auction will represent a fixed percentage of the Energy Load.
  - While the fixed percentage assigned to a tranche for the second auction onwards is expected to remain at 1%, it may be increased to foster bidder interest.
- 1.2.3. A stakeholder process may be held following the first auction under the CBP if needed to receive input from stakeholders and incorporate lessons learned into the second and subsequent auctions under the CBP.**
- 1.2.4. To participate in the auction, a bidder submits to a two-part application process.**
- In the Part 1 Application, an interested party applies to become a Qualified Bidder. To become a Qualified Bidder an interested party must be a PJM Market Participant or certify that it has no impediments to become a PJM Market Participant by the start of the delivery period.
  - In the Part 2 Application, a Qualified Bidder makes a number of certifications, submits an indicative offer, and posts pre-bid security to become a Registered Bidder.
- 1.2.5. The term "bidder" is used generically to refer to a prospective bidder, a Qualified Bidder, or a Registered Bidder.**
- 1.2.6. Each auction is conducted as a descending clock auction. A clock auction proceeds in a series of rounds. In the bidding phase of a round, each bidder states the number of tranches that it wants to supply at the price announced by the Auction Manager. The price will be in dollars per megawatt-hour. If there are more tranches bid than there are tranches available in a round, the Auction Manager reduces the price. The Auction Manager then announces the new price before the bidding phase of the next round opens. The auction continues and the price ticks down until the number of tranches bid falls to the point where it equals the number of tranches available. When the Auction ends, the bidders holding tranches in the final round are the winners. All winners receive the same price.**
- 1.2.7. Bidders that win at an auction for which results are accepted by the Commission become Energy Suppliers. Energy Suppliers will be responsible to provide the scheduled energy to an AEP Load Zone and to bear all costs that are associated with this responsibility. The schedule will settle against the day-ahead price at the delivery point. AEP Ohio will remain the Load Serving Entity ("LSE") for its SSO Customers. Energy**



Suppliers will not be providing capacity, transmission or ancillary services associated with serving the load of SSO customers.

- I.2.8. **Payments to Energy Suppliers for each MWh of Energy Supply as defined in Paragraph III.1.1 delivered will be the auction clearing price times a seasonal factor.**
- I.2.9. **The Commission Staff will oversee the conduct of the auctions and may also retain an advisor ("Commission Consultant") for this purpose. The Commission has a two (2) business day window from the conclusion of the auction for review of the results. The Commission may reject the results of the auction, through an Order filed within the review window, if specific criteria are met. The Commission may accept the results of the auction. If the Commission does not act within the review window, the results of the auction are deemed accepted by the Commission at the expiration of the review window. Winning bidders at the auction will execute the Master Energy Supply Agreement within three (3) days of acceptance of the results.**

## ARTICLE II. Information to Bidders

### II.1. Information Provided to Bidders

- II.1.1. Prospective bidders and other stakeholders can visit the CBP website [www.AEPOhioCBP.com](http://www.AEPOhioCBP.com) to obtain information and documents related to the auctions under AEP Ohio's CBP.
- II.1.2. The CBP website consists of the following sections:
- A "home" page that provides general information about the CBP.
  - A "background" page with links to AEP Ohio's filings with the Commission as well as Commission orders related to the CBP.
  - An "information" page that includes all documents and forms needed to participate in the auction, frequently asked questions, and data.
  - A "calendar" page that provides the timeline for the main events in the auction.
  - A "contact us" page with the Auction Manager's contact information, a web form for participants to register for email updates, and a web form to ask a question to the Auction Manager. The Auction Manager answers each questioner individually via email. The question and answer are then posted to the FAQ portion of the information page.
- II.1.3. The data portion of the CBP website will be updated monthly beginning in January 2013. AEP Ohio will provide the following historical data for bidders to use in preparing their bids. The data will be provided in useable electronic format such as Excel or CSV.
- Historical data will begin June 1, 2010.
  - The data will include hourly energy after 60-day reconciliation and customers counts for SSO load and CRES load in the aggregate, and will be broken down among three (3) groups: residential, small commercial and industrial, as well as large commercial and industrial.
  - The data will be provided separately for the CSP and OPCo rate zones.
  - Beginning with loads for January 2013, data will also be provided from the initial day after load backcast, which does not reflect the 60-day reconciliation.
- II.1.4. No later than eight (8) days prior to the "Part 1 Date", which is the date when Part 1 Applications are due, the Auction Manager will announce:
- A minimum starting price and a maximum starting price for the product in the auction. The minimum and maximum starting prices establish the range for the round 1 price in the auction;
  - The "tranche target", which is the number of tranches procured at auction;
  - The tranche size as a percentage of Energy Load; and
  - The estimated MW-measure of each tranche.
- II.1.5. No later than four (4) days prior to the "Part 2 Date", which is the date when Part 2 Applications are due, the Auction Manager will update the estimated MW-measure of

the tranches in the auction. At that time, the Auction Manager will also update or confirm the seasonal factors that will be applicable to the products in the auction.

- II.1.6. The Auction Manager will provide additional information to Qualified Bidders and Registered Bidders on a confidential basis, as further explained below.

## II.2. Indicative schedule

- II.2.1. An indicative schedule for events is provided below for the first auction under the CBP. The schedule below is a sample only. This schedule assumes that the final order in the corporate separation docket and the final order in the ESP II are issued by January 31, 2013. This schedule also assumes that the final order on the CBP is issued by April 30, 2013.

**Table 1. Indicative Schedule.**

Event	Date
Bidder Information Session	Tuesday, May 07, 2013
Auction Manager announces tranche target, tranche size, MW-measure, minimum and maximum starting prices	Tuesday, May 07, 2013
Part 1 Window opens	9 AM on Tuesday, May 14, 2013
Part 1 Applications are due	By 12 PM (noon) on Tuesday, May 21, 2013
Part 1 Notification Date	Friday, May 24, 2013
Part 2 Window opens	9 AM on Tuesday, May 28, 2013
Auction Manager announces any update to the MW-measure and announces seasonal factors	Thursday, May 30, 2013
Part 2 Applications are due	By 12 PM (noon) on Thursday, June 06, 2013
Part 2 Notification Date	Tuesday, June 11, 2013
Bidder User Manual Distributed	Tuesday, June 11, 2013
Trial Auction for Registered Bidders	Thursday, June 13, 2013
Auction Manager informs Registered Bidders of round 1 price	Friday, June 14, 2013
Auction begins	Wednesday, June 19, 2013
Auction Manager notifies AEP Ohio and the Commission of results <sup>1</sup>	Wednesday, June 19, 2013
End of Commission review period <sup>1</sup>	Friday, June 21, 2013
Master Energy Supply Agreements Signed <sup>1</sup>	Wednesday, June 26, 2013
Power Flow	Thursday, August 01, 2013

- II.2.2. The schedule for each auction will be posted to the “Calendar” page of the CBP website.

- II.2.3. Unless noted otherwise, a “day” is a business day and all times refer to eastern prevailing time.

<sup>1</sup> The date assumes that the auction concludes on June 19, 2013.

## **ARTICLE III. Products and Auctions**

This section summarizes the key elements of the products and provides the timing of the auctions of the CBP. The Master Energy Supply Agreement (“MESA”) provides details on the products and the Supplier Obligations. The CBP website provides details about the products to be procured in a specific auction.

### **III.1. Energy Supply and Supplier Obligations**

- III.1.1. Bidders participate in the CBP to provide “Energy Supply”, which is Energy delivered to the delivery point identified in the Master Energy Supply Agreement to meet the “Energy Load”. “Energy Load” is defined as the energy requirements of AEP Ohio’s SSO customers, as determined by AEP Ohio for each hour and scheduled prior to the daily scheduling deadline established by the PJM Agreements. Energy Load will include all transmission and distribution losses, and shall be derated by PJM for marginal losses. Energy Load excludes replacement energy provided to interruptible service customers during AEP Ohio requested interruptions.**
- III.1.2. SSO customers take retail generation service from AEP Ohio. SSO customers include PIPP customers (those that take service under AEP Ohio’s percentage of income payment plan) and Special Contract customers.**
- III.1.3. This summary is provided for bidder convenience only. Bidders should consult the Master Energy Supply Agreement for specific obligations associated with providing Energy Supply.**
- III.1.4. The delivery point will be the PJM Pnode identified in the Master Energy Supply Agreement. Suppliers are completely responsible for providing the scheduled energy to the delivery point and to bear all costs that are associated with this responsibility.**
- III.1.5. AEP Ohio will determine the delivery schedule as soon as practical, generally on the day following delivery, and communicate that schedule to each supplier electronically. AEP Ohio will unilaterally enter the schedule as an internal bilateral transaction in a PJM account designated by the supplier and there will be no need for supplier confirmation. The schedule will be specified as settling against the day-ahead price at the delivery point.**
- III.1.6. Power purchased through the CBP will be considered a prudent purchased power transaction in the wholesale market dedicated to AEP Ohio SSO customers for purposes of the Fuel Adjustment Clause (“FAC”).**
- III.1.7. AEP Ohio will continue to be the LSE for its SSO customers. Energy Suppliers will be providing Energy Supply as a wholesale energy sale to AEP Ohio through a PJM Internal Bilateral Transaction and the load of SSO customers will not be transferred to Energy Suppliers.**

**III.2. Auctions and Tranches**

- III.2.1. AEP Ohio will procure energy for its SSO customers on a slice-of-system basis. In each auction, the supply to be procured will be divided into a number of tranches and each tranche will represent a fixed percentage of the Energy Load.
- III.2.2. Ten (10) tranches each representing one percent (1%) will be procured in the first auction. The timing of the first auction is uncertain and is assumed in this document to take place in June 2013. The delivery period will begin six (6) months after AEP Ohio receives final orders from the Commission in both the ESP II and corporate separation dockets. The delivery period ends on May 31, 2015.
- III.2.3. The second auction, which will take place in January 2014, will procure 25% of Energy Load for a delivery period beginning June 1, 2014 and ending on May 31, 2015. The Energy Load will be divided in tranches. Each tranche for this auction will represent the same fixed percentage of the Energy Load, which will be set at no less than 1%.
- III.2.4. The third auction, which will take place in March 2014, will also procure 25% of Energy Load for a delivery period beginning June 1, 2014 and ending on May 31, 2015. Each tranche for this auction will represent a fixed percentage of the Energy Load, which will be set at no less than 1%.
- III.2.5. The fourth auction, which will take place in June 2014, will procure 40% of Energy Load for a delivery period beginning January 1, 2015 and ending on May 31, 2015. Each tranche for this auction will represent the same fixed percentage of the Energy Load, which will be set at no less than 1%.

**ARTICLE IV. Pre-Auction Processes**

There are two (2) parts to the application process. In the Part 1 Application, interested parties apply to become Qualified Bidders. In the Part 2 Application, each Qualified Bidder makes certifications, provides an indicative offer, and posts pre-bid security to become a Registered Bidder. The Auction Manager communicates by email during the review of the Part 1 and Part 2 Applications unless specifically instructed otherwise by a bidder.

**IV.1. Part 1 Application**

IV.1.1. In the Part 1 Application, a bidder must:

- Submit an application from an individual with the power to bind the bidder;
- Agree to comply with all rules of the auction;
- Agree that if the bidder wins at the auction, the bidder will execute the Master Energy Supply Agreement with AEP Ohio within three (3) days of acceptance of the results by the Commission and the bidder will comply with the creditworthiness requirements set forth in the Master Energy Supply Agreement;
- Show that the bidder is a member in good standing with PJM and is qualified by PJM as a “Market Buyer” and “Market Seller” or certify that there exists no impediment to fulfilling this requirement by the start of the delivery period;
- Certify that if the bidder becomes a Qualified Bidder, it will not disclose information regarding the list of Qualified Bidders or confidential information that may be obtained during the bidding process about Qualified Bidders;
- Provide financial statements and credit ratings; and
- Certify that if the bidder becomes a Qualified Bidder, it will not substitute another entity in its place, transfer its rights to another entity, or otherwise assign its status as a Qualified Bidder to another entity.

IV.1.2. The financial information provided in the Part 1 Application will be used to determine the bidder’s (or the bidder’s guarantor) credit-based tranche cap according to the table below. If the bidder or its guarantor is rated by only one (1) rating agency, that rating will be used. If the bidder or its guarantor is rated by at least two (2) rating agencies, the lower of the two (2) highest ratings will be used. The credit-based tranche cap is an overall cap in effect across all auctions of the CBP.

**Table 2. Credit-Based Tranche Cap.**

Credit Rating for Bidder or Guarantor			Credit-Based Tranche Cap
S&P	Moody's	Fitch	
BB and above	Ba2 and above	BB and above	No Cap
BB-	Ba3	BB-	10
Below BB-	Below Ba3	Below BB-	5
If not rated by any of these rating agencies			5

IV.1.3. A single credit-based tranche cap is granted to affiliated bidders.

- IV.1.4. The parameters in the table above may vary over time at AEP Ohio's sole discretion.
- IV.1.5. Part 1 Applications must be submitted to the Auction Manager no later than 12 PM (noon) on the Part 1 Date. The Auction Manager notifies bidders no later than three (3) days after the Part 1 Date whether they have met all the requirements to become a Qualified Bidder. The Part 1 Notification includes a summary of the pre-bid security that the Qualified Bidder must post as one of the requirements to become a Registered Bidder.
- IV.1.6. Bidders that have qualified in a prior auction under AEP Ohio's CBP will be able to participate in an abbreviated process.
- IV.1.7. With the Part 1 Notification, the Auction Manager will send to each Qualified Bidder a list of Qualified Bidders. Further, the Auction Manager will send the list of Qualified Bidders to AEP Ohio, Commission Staff, and the Commission Consultant. All parties receiving a list of Qualified Bidders, or any information that is not publicly released as detailed below, will be subject to the confidentiality requirements as specified below and in the Communications Protocols.

## **IV.2. Part 2 Application**

- IV.2.1. Qualified Bidders must successfully complete the Part 2 Application process in order to become a Registered Bidder that can bid in the auction. Only Qualified Bidders may submit a Part 2 Application.
- IV.2.2. A Qualified Bidder is associated with another Qualified Bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of the auction and the ability of the auction to produce competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the Auction Manager relies on a number of factors to assess and promote competitive bidding, including the number of independent competitors, using inaccurate information or insufficient disclosure of associations in the Part 2 Application is prohibited.
- IV.2.3. In the Part 2 Application, each Qualified Bidder will make a number of certifications regarding associations to ensure that they are participating independently of other Qualified Bidders and to ensure the confidentiality of information regarding the auction. These certifications are provided below in Article VIII. Qualified Bidders that are unable to make all these certifications may be required to make additional undertakings and may be subject to specific rules regarding the load caps, as specified more fully in the Rules and Protocols for Participation by Associated Bidders.
- IV.2.4. In the Part 2 Application, each Qualified Bidder must also:
  - Submit an indicative offer; and
  - Post pre-bid security sufficient to support its indicative offer at the maximum starting price.
- IV.2.5. A Qualified Bidder's indicative offer specifies two (2) numbers of tranches. The first number represents the number of tranches that the Qualified Bidder is willing to supply

at the minimum starting price and the second number represents the number of tranches that the Qualified Bidder is willing to supply at the maximum starting price.

IV.2.6. The indicative offer must be such that:

- The number of tranches specified in the indicative offer at the minimum starting price does not exceed the number of tranches specified at the maximum starting price;
- The number of tranches at the maximum starting price does not exceed the load cap, which is set at 80% of tranches available in the auction;
- The number of tranches at the maximum starting price together with the number of tranches already won in previous auctions under the CBP do not exceed the credit-based tranche cap.

IV.2.7. The indicative offer is important in two (2) respects. First, the Auction Manager may use the indicative offers to inform the setting of the round 1 price. Second, the indicative offer at the maximum starting price determines the bidder's initial eligibility, which is the maximum number of tranches that a bidder can bid at any point during the auction.

IV.2.8. Each Qualified Bidder must post pre-bid security sufficient to support its indicative offer at the maximum starting price:

- Each bidder must post pre-bid security in the form of a pre-bid letter of credit in an amount equal to \$500,000 per tranche of the bidder's indicative offer at the maximum starting price;
- Each bidder that relies on the financial standing of a guarantor must provide a letter of intent to provide a guaranty in an amount equal to the Independent Credit Requirement ("ICR") at the time of execution of the Master Energy Supply Agreement minus \$500,000;
- Each bidder that relies on its own financial standing may be required to submit a letter of reference from a bank and would be so advised in its Part 1 Notification.

IV.2.9. The standard form of the pre-bid letter of credit and other credit documents that are acceptable to AEP Ohio will be posted to the CBP website.

IV.2.10. Pre-Bid Letters of Credit and additional security (if required) will remain in full force, at a minimum, until the tenth (10<sup>th</sup>) day after the start of the auction. Subsequently, a bidder's financial guaranty will be marked cancelled and returned: (a) as soon as practicable if the bidder has won no tranches, and (b) after the bidder has signed the Master Energy Supply Agreement and has complied with all creditworthiness requirements of the Master Energy Supply Agreement for the tranches that it has won.

IV.2.11. AEP Ohio can collect on the financial guarantees of bidders that win tranches but that fail to sign the Master Energy Supply Agreement or fail to comply with the creditworthiness requirements within three (3) days of acceptance of the results by the Commission.



- IV.2.12. Bidders will have an opportunity to request modifications to the standard credit instruments in advance of qualification. All modifications accepted to these credit instruments for the benefit of a single bidder will be made available to all bidders on an optional basis. The prospective bidder, in its Part 2 Application, must provide the required executed credit documents that either use the standard form or incorporate only those modifications to the standard form that are acceptable to AEP Ohio.
- IV.2.13. Part 2 Applications must be submitted to the Auction Manager no later than 12 PM (noon) on the Part 2 Date. Qualified Bidders will be notified by the Auction Manager whether they have met all the requirements to become a Registered Bidder no later than three (3) days after the Part 2 Date. With the Part 2 Notification, the Auction Manager will send to each Registered Bidder its initial eligibility, the list of Registered Bidders, and the total initial eligibility in the auction across all Registered Bidders. Qualified Bidders, in their Part 2 Applications, will have undertaken to maintain the confidentiality of the list of Registered Bidders and the total initial eligibility, and to destroy documents including electronic files with this information provided by the Auction Manager within five (5) days of the Commission decision on the auction results.
- IV.2.14. No later than three (3) days before the auction, the Auction Manager will inform all Registered Bidders of the round 1 price in the auction. The round 1 price will be no higher than the maximum starting price and no lower than the minimum starting price for the product. The Auction Manager will set the round 1 price.
- IV.2.15. The Auction Manager may reduce the tranche target prior to the auction if indications of interest in the auction are such that doing so is required to promote more competitive bidding.
- IV.2.16. The Auction Manager will also provide to AEP Ohio, Commission Staff and Commission Consultant the list of Registered Bidders and the total initial eligibility in the auction across all Registered Bidders.

### **IV.3. Sanctions for Failing to Comply with the Part 1 and Part 2 Applications**

- IV.3.1. Sanctions can be imposed on a bidder for failing to disclose information relevant to determining associations, for coordinating with another bidder, or for failing to abide by any of the certifications that it will have made in its Part 1 and Part 2 Applications.
- IV.3.2. Such sanctions can include, but are not limited to, termination of the Master Energy Supply Agreement, loss of all rights to provide energy supply for AEP Ohio to serve any load won by such bidder, forfeiture of financial guarantees and other fees posted or paid, prosecution under applicable state and federal laws, debarment from participation in future competitive bidding process, and other sanctions that may be appropriate.
- IV.3.3. The Auction Manager, in its report submitted to the Commission at the conclusion of the auction, will make a recommendation on a possible sanction for any bidder that violates any of its undertakings under the Part 1 or the Part 2 Application process or that fails to disclose information required by the Part 1 or the Part 2 Application process.

**IV.4. Application Processing**

- IV.4.1.** The Auction Manager, for the purposes of the auction, provides all notifications to the Representative by email unless specifically instructed otherwise by a bidder. Any notification or other written communication from the Auction Manager to a bidder that is sent by email will be sent to the email address provided for the Representative and the Representative's Nominee(s). Any such notification or communication will be deemed received by the bidder at the time of delivery or transmission, provided that where delivery of transmission occurs after 6 PM on a business day or occurs on a day that is not a business day, receipt will be deemed to occur at 9 AM on the following business day. Any reply from the bidder to the Auction Manager by email should be addressed to AEP-CBP@nera.com to ensure a prompt reply.
- IV.4.2.** Part 1 Applications are received and processed during a specific timeframe, the "Part 1 Window". The last day of the Part 1 Window is called the "Part 1 Date". All materials for the Part 1 Applications must be received by 12 PM (noon) on the Part 1 Date. Part 2 Applications are received and processed during a specific timeframe, the "Part 2 Window". The last day of the Part 2 Window is called the "Part 2 Date". All materials for the Part 2 Applications must be received by 12 PM (noon) on the Part 2 Date.
- IV.4.3.** The exclusive method of responding to the qualification standards required in the Part 1 Application is the use of the Part 1 Form. The Part 1 Form includes an Appendix that may be used at any time by the Representative to provide contact information for up to four (4) individuals to be included in electronic communications from the Auction Manager.
- IV.4.4.** The Part 1 Application consists of one (1) electronic copy and one (1) hardcopy signed original of the Part 1 Form and one (1) copy of all documents requested in the Part 1 Form.
- IV.4.5.** The Auction Manager receives and processes the Part 1 Applications during the Part 1 Window. If the hardcopy Part 1 Application is received by post, the Auction Manager acknowledges receipt by sending to the bidder via email a photocopy of the first page of the Part 1 Form stamped with the time and the date that it was received. If a Part 1 Application is hand-delivered, the Auction Manager acknowledges receipt by providing to the deliverer a copy of the first page of the Part 1 Form stamped with the time and the date that it was received. If the Part 1 Form is received electronically and no other portion of the Part 1 Application is received, the Auction Manager acknowledges receipt by reply email. The Auction Manager confirms receipt whether or not the Part 1 Application arrives during the Part 1 Window; however, Part 1 Applications are only processed during the Part 1 Window.
- IV.4.6.** If the Part 1 Application arrives before 12 PM (noon) on any day during the Part 1 Window, the Auction Manager acknowledges receipt on the day the Part 1 Application is received with the results of an initial review. The initial review states either that the Part 1 Application is complete and is being considered, or the initial review lists items of the Part 1 Application that are deficient or require clarification. If a Part 1 Application arrives after 12 PM (noon) on any day during the Part 1 Window prior to the Part 1 Date, the Auction Manager sends the confirmation of receipt along with the initial review by 12 PM (noon) of the next day. If the Auction Manager is in receipt only

of an electronic copy of the Part 1 Form, the Auction Manager acknowledges receipt but does not proceed to an initial review until additional materials are received.

- IV.4.7. If the Part 1 Application is incomplete or requires clarification, the Auction Manager sends a deficiency notice to the bidder. If a bidder receives a first deficiency notice from the Auction Manager regarding any item of the Part 1 Application, the bidder has until 12 PM (noon) on the Part 1 Date, or until 6 PM on the day following the business day during which a first deficiency notice is sent to the bidder, whichever comes later, to respond. If the bidder does not correct or adequately explain the deficiency within the time allowed, the Part 1 Application may be rejected. If the Part 1 Application is complete, the Auction Manager sends a complete notice with a copy of the first page of the Part 1 Form marked "complete".
- IV.4.8. A bidder is qualified pursuant to a successful Part 1 Application if its Part 1 Application is received on or before 12 PM (noon) on the Part 1 Date and if its Part 1 Application is complete. If a bidder receives a notice from the Auction Manager that the Part 1 Application is deficient or requires clarification, and if the bidder does not respond by the time required in the notice, the bidder will not be qualified. All bidders who are qualified pursuant to a successful Part 1 Application are Qualified Bidders.
- IV.4.9. The Auction Manager will notify all Qualified Bidders regarding its status on the Part 1 Notification Date. In the Part 1 Notification, the Auction Manager will provide to each Qualified Bidder a creditworthiness assessment and will also indicate for each bidder whether additional security in the form of a letter of intent to provide a guaranty or a letter of reference will be required with the Part 2 Application. Along with the Part 1 Notification, the Auction Manager will also send each Qualified Bidder a list of all Qualified Bidders, but the list of Qualified Bidders will not be publicly disclosed.
- IV.4.10. Qualified Bidders that wish to participate in the auction must submit a Part 2 Application to the Auction Manager. Only Qualified Bidders may submit Part 2 Applications.
- IV.4.11. The exclusive method of responding to the requirements of in the Part 2 Application is the use of the Part 2 Form. For a Part 2 Application to be accepted, it must be complete, including its indicative offer, financial guarantees and additional security (if necessary). The financial guarantees and additional security must be provided in a form acceptable to AEP Ohio and must be sufficient to cover the indicative offer at the maximum starting price.
- IV.4.12. The Part 2 Application consists of one (1) electronic copy and one (1) hardcopy signed original of the Part 2 Form, one (1) executed original of the Pre-Bid Letter of Credit , and if applicable one (1) executed original of the letter of intent to provide a guaranty and/or one (1) letter of reference.
- IV.4.13. The Auction Manager receives and processes the Part 2 Applications during the Part 2 Window. If a Part 2 Application is received by post, the Auction Manager acknowledges receipt by sending to the bidder a photocopy of the first page of the Part 2 Form stamped with the time and the date that it was received. If a Part 2 Application is hand-delivered, the Auction Manager acknowledges receipt by providing to the deliverer a copy of the first page of the Part 2 Form stamped with the time and the date that it

was received. If the Part 2 Form is received electronically and no other portion of the Part 2 Application is received, the Auction Manager acknowledges receipt by reply email. The Auction Manager confirms receipt whether or not the Part 2 Application arrives during the Part 2 Window; however, Part 2 Applications are only processed during the Part 2 Window.

- IV.4.14.** If the Part 2 Application arrives before 12 PM (noon) on any day during the Part 2 Window, the Auction Manager acknowledges receipt on the day the Part 2 Application is received with the results of an initial review. The initial review states either that the Part 2 Application is complete and is being considered, or the initial review lists items of the Part 2 Application that are deficient or require clarification. If a Part 2 Application arrives after 12 PM (noon) on any day during the Part 2 Window prior to the Part 2 Date, the Auction Manager sends the confirmation of receipt along with the initial review by 12 PM (noon) of the next day. If the Auction Manager is in receipt only of an electronic copy of the Part 2 Form, the Auction Manager acknowledges receipt but does not proceed to an initial review until additional materials are received.
- IV.4.15.** If the Part 2 Application is incomplete or requires clarification, the Auction Manager sends a deficiency notice to the bidder. If a bidder receives a first deficiency notice from the Auction Manager regarding any item of the Part 2 Application, the bidder has until 12 PM (noon) on the Part 2 Date, or until 6 PM on the day following the business day during which a first deficiency notice is sent to the bidder, whichever comes later, to respond except if the deficiency is related to the Pre-Bid Letter of Credit. For matters related to the Pre-Bid Letter of Credit, the bidder must respond by 12 PM (noon) on the Part 2 Date, or by 6 PM on the second day following the business day during which a first deficiency notice is sent, whichever comes later, to respond. If the bidder does not correct or adequately explain the deficiency within the time allowed, the Part 2 Application may be rejected. If the Part 2 Application is complete, the Auction Manager sends a complete notice with a copy of the first page of the Part 2 Form marked "complete".
- IV.4.16.** A bidder is registered pursuant to a successful Part 2 Application if its Part 2 Application is received on or before 12 PM (noon) on the Part 2 Date, and if its Part 2 Application is complete. If a bidder receives a notice from the Auction Manager that the Part 2 Application is deficient or requires clarification, and if the bidder does not respond by the time required in the notice, the bidder will not be registered. A bidder that submits a Part 2 Application will be notified whether or not the bidder has registered pursuant to a successful Part 2 Application. All bidders who are registered pursuant to a successful Part 2 Application are Registered Bidders.
- IV.4.17.** The Auction Manager will notify each Registered Bidder regarding its status on the Part 2 Notification Date. Along with the Part 2 Notification, the Auction Manager will also send to each Registered Bidder a list of all Registered Bidders, the total initial eligibility in the auction, as well as the Bidder User Manual. Neither the list of Registered Bidders nor the total initial eligibility in the auction will be released publicly.

### **IV.5. Extraordinary Events**

- IV.5.1.** An extraordinary event must be agreed to by AEP Ohio and the Auction Manager. Such events could include, but are not limited to, the advent of war, the disruption of a major

supply source for potentially extended periods, or other events that could affect significantly the cost of supply.

- IV.5.2. This section is applicable to a situation where AEP Ohio and the Auction Manager agree that an extraordinary event has occurred between the time at which the minimum starting price and the maximum starting price are announced and the day on which bidding starts.
- IV.5.3. The Auction Manager may determine that, due to extraordinary events, the minimum starting price and the maximum starting price require revision. The Auction Manager will determine the revised minimum starting price and revised maximum starting price. The Auction Manager may also revise the schedule for the auction. The Auction Manager will announce to bidders any revision to the maximum starting price, to the minimum starting price, or to the schedule.
- IV.5.4. If the indicative offers have already been received, the Auction Manager will require new indicative offers from bidders based on the revised minimum starting price and revised maximum starting price. The Auction Manager will establish a schedule that affords bidders sufficient time to revise their indicative offers and pre-bid security.

## **ARTICLE V. Bidding in the Auction**

### **V.1. General**

- V.1.1.** The auction format is a multiple-round descending-price clock auction.
- V.1.2.** Each round of the auction is divided into three (3) phases: a bidding phase, a calculating phase, and a reporting phase.
- V.1.3.** In the bidding phase of the round, bidders place bids. A bidder can modify its bid as long as the bidding phase of the round is open. The valid bid is the last received bid that is submitted during the bidding phase and processed by the Auction Software. A valid bid is a firm commitment to supply the number of tranches indicated at the price of the round and a valid bid cannot be rescinded.
- V.1.4.** The calculating phase immediately follows the bidding phase. In the calculating phase of the round, the Auction Manager tabulates the results of that round's bidding phase and calculates the price for the next round. During this phase, bidders cannot submit bids and bidders do not yet have access to the results from that round's bidding phase.
- V.1.5.** The reporting phase immediately follows the calculating phase. In the reporting phase of the round, the Auction Manager informs the bidders of the results of that round's bidding phase. All bidders are informed of the going price for the next round's bidding phase and are provided with a range of excess supply in the auction. Each bidder privately receives the results of its own bid from that round.
- V.1.6.** The Auction Manager provides the times of the start and end of each phase of the rounds to the bidders with the Bidder User Manual. The schedule is subject to change at the Auction Manager's discretion and bidders will be advised of any changes in the schedule through the Auction Software.

### **V.2. Round 1 of the Auction**

- V.2.1.** The "going price" in a round is the price announced by the Auction Manager for a round. The round 1 price is announced to Registered Bidders no later than three (3) days prior to the start of the auction.
- V.2.2.** A bid in round 1 consists of a number of tranches that the bidder wants to supply at the round 1 price. In round 1, a bidder cannot bid more tranches than its initial eligibility as determined by the indicative offer at the maximum starting price submitted in the Part 2 Application. In round 1, a bidder may bid on fewer tranches than the bidder's initial eligibility (including bidding zero tranches).
- V.2.3.** If a bidder does not submit a bid during the bidding phase of round 1, the bidder is assigned a default bid. The default bid in round 1 is zero tranches and the bidder cannot be a winner at the auction.
- V.2.4.** During the calculating phase, the Auction Manager reviews the results of bidding in round 1 and round 1 then moves to the reporting phase.

- V.2.5. If it is the case that the number of tranches bid by all bidders exceeds the number of tranches available, the auction proceeds to round 2. During the reporting phase of round 1, the Auction Manager informs all bidders of the going price for round 2. The going price for round 2 is lower than the going price for round 1. During the reporting phase of round 1, the Auction Manager informs all bidders of a range of excess supply. The possible ranges of excess supply will be provided to bidders with the Bidder User Manual. During the reporting phase of round 1, the Auction Manager informs each bidder individually of its eligibility for round 2. The eligibility of a bidder for round 2 is the number of tranches the bidder bid in round 1.

### V.3. Round 2 and Subsequent Rounds

- V.3.1. The going price in a round is the price announced in the reporting phase of the previous round. Bidders submit bids during the bidding phase.
- V.3.2. A bid must specify the number of tranches that the bidder wants to supply at the going price. A bidder cannot bid more tranches in a round than its eligibility for that round. A bidder can either select the same number of tranches as it bid in the previous round, or it can select to bid fewer tranches. A bidder cannot increase the number of tranches bid from the previous round.
- V.3.3. If a bidder selects to bid fewer tranches than in the previous round, the bidder withdraws tranches from the auction. The bidder is required to specify an exit price for the tranches that the bidder is withdrawing. An exit price must be less than or equal to the going price in the previous round and must be greater than the going price in the current round. A bidder that withdraws tranches loses the eligibility associated with these tranches and forfeits the right to bid these tranches for the remainder of the auction.
- V.3.4. A bidder with positive eligibility must submit a bid in every round (even when the bidder's bid does not change). If a bidder with positive eligibility does not submit a bid during the bidding phase of a round, the bidder is assigned a default bid. The default bid is zero tranches. The default bid withdraws all tranches at an exit price equal to the going price in the previous round.
- V.3.5. During the calculating phase, the Auction Manager reviews the results of bidding for the round and the round then moves to the reporting phase.
- V.3.6. If it is the case that there are more tranches bid than are available, the auction proceeds to the next round. In the reporting phase of the current round, the Auction Manager informs all bidders of the going price for the next round. During the reporting phase, the Auction Manager informs all bidders of a range of excess supply. The Auction Manager informs each bidder individually of its eligibility for the next round. The eligibility of a bidder for the next round is the bidder's eligibility for the current round less the number of tranches withdrawn in the current round.
- V.3.7. If it is not the case that the number of tranches bid by all bidders exceeds the number of tranches available, the auction ends in the reporting phase of the round. The Auction Manager informs all bidders of the auction clearing price. The Auction

Manager informs each bidder of the number of tranches it has won at the auction clearing price.

### **V.4. End of Auction**

- V.4.1. The auction ends in the reporting phase of the first round in which the number of tranches bid equals or falls short of the number of tranches available. This is the final round.
- V.4.2. If the number of tranches bid by all bidders in the final round exactly equals the number of tranches that are available, the auction clearing price is the going price in the final round.
- V.4.3. If the number of tranches bid by all bidders in the final round falls short of the number of tranches available, and if the number of tranches bid by all bidders in the round immediately preceding the final round exceeded the number of tranches available, the Auction Manager first accepts all bids at the going price of the final round. The Auction Manager then ranks the withdrawn tranches in ascending order of their exit price. The Auction Manager accepts enough tranches to award all available tranches, in order, starting with the lowest exit price. The auction clearing price is the exit price associated with the last awarded tranche and is the lowest price at which sufficient supply is bid for the tranches available.
- V.4.4. If the Auction Manager must award some but not all of the tranches from two (2) or more bidders that named the same exit price, the Auction Manager chooses at random, for each tranche, the bidder that will be awarded the tranche. For the first tranche needed at the tied exit price, the probability that a bidder is chosen is the number of tranches that the bidder has withdrawn at the exit price divided by the total number of tranches withdrawn at the exit price. If a second tranche is needed at the tied exit price, the Auction Manager again will choose at random the bidder whose tranche will be retained. The probability that any one bidder is chosen is the number of tranches that the bidder has withdrawn at the exit price and that have not yet been awarded divided by the total number of tranches withdrawn at the exit price and that have not yet been awarded. The Auction Manager repeats this procedure until all tranches are awarded.
- V.4.5. The Auction Manager selects withdrawn tranches that are a result of default bids only if all bids at the going price and all tranches withdrawn by bidders (and not by default) are not sufficient to meet the number of tranches available. If the Auction Manager must award withdrawn tranches that are the result of default bids and two (2) or more bidders have default bids, the Auction Manager chooses at random, for each tranche, the bidder that will be awarded the tranche, in a procedure analogous to that described in the preceding paragraph.

### **V.5. Decrements**

- V.5.1. The percentage decrease of the going price from one round to the next is called a decrement. The Auction Manager will define a relationship whereby the decrement will be positively related to the level of excess supply.



- V.5.2. This relationship, in the form of an equation or a table, will be provided to bidders in the Bidder User Manual.
- V.5.3. The Auction Manager has the discretion in any round to override the decrement relationship. The Auction Manager would advise bidders when it uses such discretion.
- V.5.4. Prices will be rounded off to the nearest cent.

### **V.6. Miscellaneous Provisions**

- V.6.1. A bidder requests an extension during the bidding phase of a round; such a request extends the bidding phase of the round by 10 minutes for all bidders. The bidding phase of a round can be extended only once by 10 minutes. Each bidder is allowed two (2) extensions during the auction. A bidder with positive eligibility is automatically deemed to have requested an extension when – by the scheduled ending time of the bidding phase – the bidder has not submitted a bid and when the bidder has not already used the two (2) allowable extensions. A bidder with positive eligibility that has already used the two (2) allowable extensions and that does not submit a bid during a round will be assigned a default bid consisting of zero tranches. Extension requests from all bidders are granted but all extensions run concurrently. All bidders that have requested an extension during the bidding phase of a round will see their available number of extensions reduced.
- V.6.2. The Auction Manager can call a time-out to the auction at any time during a round. It is intended that a time-out will suspend activity in the auction for a period of no more than one hour; however, the Auction Manager retains the discretion to suspend activity for a longer period if necessary. Whenever a time-out is called, the Auction Manager reports to all bidders how long the time-out is expected to last.
- V.6.3. If there is insufficient supply for the tranches to ensure competitive bidding, the Auction Manager will reduce the tranche target. The criteria that could lead to such a reduction will be determined prior to the auction but will not be announced to bidders. Once certain pre-specified criteria have been met, the discretion to reduce the tranche target will be eliminated and there will be no reduction in the tranche target. Thus, any exercise of this discretion would be more likely in the earlier rounds of the auction.
- V.6.4. A bidder with zero eligibility will lose its ability to view the auction results within three (3) rounds.

### **V.7. Bidding Procedures**

- V.7.1. The primary bidding method for the auction is the electronic submission of bids through the Auction Software. The Auction Manager will hold a Trial Auction for the purposes of bidder training. Participation at the Trial Auction is optional.
- V.7.2. The secondary bidding method for the auction is by phone. If a bidder is experiencing technical difficulty and cannot submit a bid using the Auction Software, the bidder calls a technical assistant who enters the bidder's bid on the bidder's behalf.

- V.7.3. It is the bidder's sole and entire responsibility to submit a bid on time whether using the primary or secondary bidding method.**

## **ARTICLE VI. Post-Auction Process**

### **VI.1. Notification of Results**

- VI.1.1.** At the conclusion of the auction, the Auction Manager prepares a report on the auction results, which will:
- Include a determination of whether the competitive bidding process rules were followed and if not, whether the violation was such as to invalidate the results of the auction;
  - Recommend a possible sanction for any bidder that violates any of its undertakings under the Part 1 or the Part 2 Application process or that fails to disclose information required by the Part 1 or the Part 2 Application process;
  - Identify the winning bidders, the number of tranches won by each winning bidder, and the auction clearing price;
  - Report any issues with the conduct of the auction; and
  - Include an assessment of whether the bidding process was competitive.
- VI.1.2.** The Auction Manager transmits its report to the Commission and the Commission Consultant. The Auction Manager advises the winning bidders in the auction when the report has been transmitted to the Commission.
- VI.1.3.** The Commission has a two (2) business day window from the conclusion of the auction for review of the results. The Commission may reject the results of the auction, through an Order filed within the review window, based upon a report from the Auction Manager or the Commission Consultant that the auction violates a specific CBP rule in such a manner so as to invalidate the auction or if the Commission determines that one or more of the following criteria were not met:
- The auction was oversubscribed on the basis of the indicative offers received in the Part 2 Application;
  - There were four or more bidders;
  - No bidder won more than 80% of the tranches available at the start of the auction.
- Otherwise, the Commission shall accept the auction results.
- VI.1.4.** The Commission may announce its acceptance of the results of the auction. If the Commission does not act within the review window, the results of the auction are deemed accepted by the Commission at the expiration of the review window.
- VI.1.5.** Upon acceptance of the results by the Commission:
- The Auction Manager will notify AEP Ohio of the identity of the winning bidders and the number of tranches won by each winning bidder. The Auction Manager will confirm the auction clearing price. The Auction Manager will also provide contact information for the winning bidders so as to enable AEP Ohio to contact the winning bidders to execute necessary documents.

- The Auction Manager will notify each winning bidder of how many tranches the bidder has won and the Auction Manager will confirm the auction clearing price.
- The Auction Manager also will notify the unsuccessful bidders that they have not won any tranches.

VI.1.6. The names of the winning bidders, the number of tranches won by each bidder, and the auction clearing price will remain confidential until released publicly by the Commission or as required by law.

## **VI.2. Execution of Master Energy Supply Agreement**

VI.2.1. The winning bidders and AEP Ohio will execute the Master Energy Supply Agreements within three (3) days of acceptance of the results by the Commission.

VI.2.2. Each winning bidder must demonstrate compliance with the creditworthiness requirements set forth in the Master Energy Supply Agreement.

VI.2.3. A winning bidder's financial guaranty posted with its Part 2 Application may be forfeited if the winning bidder does not execute the Master Energy Supply Agreement within three (3) days of acceptance of the results by the Commission, if it fails to demonstrate compliance with the creditworthiness requirements set forth in the Master Energy Supply Agreement, or if it fails to agree to any of the terms of the Master Energy Supply Agreement. If AEP Ohio exercises its right to collect on the financial guarantees, then any contractual rights or other entitlements of the winning bidder will terminate immediately without further notice by AEP Ohio. In addition, the winning bidder will be liable for damages incurred by AEP Ohio, which will be determined in accordance with the terms of the Master Energy Supply Agreement as though the winning bidder were a defaulting party to the Master Energy Supply Agreement.

VI.2.4. The payment to Energy Suppliers for tranches won will be the auction clearing price times a seasonal factor. The seasonal factor for the summer, paid to the winning bidder of the tranche from June 1 through September 30, will be higher than one (1). The seasonal factor for the winter, paid to the winning bidder in remaining months, will be less than one (1). AEP Ohio will calculate the seasonal factors in advance of each auction in response to changing market conditions. The seasonal factors will be provided to bidders no later than four (4) days prior to the Part 2 Date and will be constant during the duration of the Master Energy Supply Agreement.

## ARTICLE VII. Contingency Plans

- VII.1.1.** In certain circumstances purchases may be made under the Contingency Plans implemented through Sections VII.1.2, VII.1.3 and VII.1.4 or that are otherwise approved by the Commission. Costs of Contingency Plans will be deemed prudent and passed through AEP Ohio's retail rates.
- VII.1.2.** For the auctions prior to the last auction under the CBP, if not all available tranches are procured in an auction, the unfilled tranches will be offered in the next auction process under the CBP.
- If the delivery period for the unfilled tranches begins prior to the next auction process under the CBP, AEP Ohio will procure the corresponding Energy Load in PJM-administered markets. The unfilled tranches when offered in the next auction process will have a delivery period that starts on the first day of the second month after the auction starts.
  - If some tranches remain unfilled after being offered at auction a second time, AEP Ohio will procure the corresponding Energy Load in PJM-administered markets for the remainder of the delivery period.
  - AEP Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to procure energy for these tranches.
- VII.1.3.** If not all tranches are procured in the last auction under the CBP, AEP Ohio will hold a supplemental auction process to procure supply for the unfilled tranches under the CBP Rules. If some tranches remain unfilled after the supplemental auction, AEP Ohio will procure the corresponding Energy Load in PJM-administered markets. AEP Ohio will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to procure energy for these tranches.
- VII.1.4.** In the event that a winning bidder defaults prior to or during the delivery period of a product, AEP Ohio will offer the defaulted tranches of that product in the next auction process under the CBP as long as a subsequent auction is scheduled and as long as the time left in the delivery period of the product as of the date of the next auction is greater than six (6) months.
- The defaulted tranches of the product, if offered in the next auction process, will have a delivery period that starts on the later of (i) the start of the delivery period for that product under the Master Energy Supply Agreement ; and: (ii) the first day of the second month after the auction starts. Between the time of default and the start of the delivery period, AEP Ohio will procure as needed the corresponding Energy Load in PJM-administered markets.
  - If some of the defaulted tranches remain unfilled after being offered at auction, AEP Ohio will procure the corresponding Energy Load in PJM-administered markets for the remainder of the delivery period.
  - AEP Ohio will procure replacement energy for the tranches affected by bidder defaults only as set forth above, unless otherwise directed by the Commission. However, as part of the Contingency Plan, AEP Ohio will have the right to purchase (or sell, as applicable) energy in the spot market to replace the energy not provided

as a result of a bidder default until and to the extent that replacement energy supply is procured by AEP Ohio as set forth above.

- VII.1.5. All costs incurred by AEP Ohio in connection with a supplier default and with any Contingency Plan will be deemed prudent and passed through AEP Ohio's retail rates. The costs of purchases and/or sales made under the Contingency Plan associated with a defaulting supplier will be offset by amounts recovered from the supplier, liquid security or Guarantees; however, the pass-through of any excess costs will not be limited to the amount of any such recovery. In some cases, such as when the termination costs incurred by AEP Ohio pursuant to the Master Energy Supply Agreement as a result of the supplier default are less than the costs that would have been incurred absent the default, payments may be due to the defaulting supplier. Such payments to the defaulting supplier will be deemed prudent costs associated with procuring energy for Energy Load and will be passed through AEP Ohio's retail rates.
- VII.1.6. Any changes that the Commission may require concerning the timing and nature of replacement purchases may affect the costs of replacement energy for Energy Load in the event that not all available tranches are procured in any auction or a winning supplier defaults. The consequences of such changes will be borne by defaulting suppliers or passed through AEP Ohio's retail rates to the extent that they affect replacement costs.

## **ARTICLE VIII. Associations and Handling of Confidential Information**

### **VIII.1. Process for Reporting Associations, Identifying Concerns and Remedies**

- VIII.1.1.** A prospective bidder applying to qualify to bid will be required to disclose in its Part 1 Application any bidding agreement or arrangement in which it may have entered. A prospective bidder will be required to certify in its Part 1 Application that, should it qualify to participate, it will not disclose information regarding the list of Qualified Bidders. A prospective bidder also will be required to certify that it accepts the terms of the Master Energy Supply Agreement and, should it win tranches, it will sign the applicable Master Energy Supply Agreement and comply with all creditworthiness requirements by the stated deadline.
- VIII.1.2.** Once entities are qualified to bid, each Qualified Bidder will be asked in its Part 2 Application to make a number of certifications, each detailed in section VIII.3 below, and each bidder may be required to provide additional information to the Auction Manager if a certification cannot be made. Each Qualified Bidder will be asked to certify that it will undertake to appropriately restrict its disclosure of Confidential Information relative to its bidding strategy and Confidential Information regarding the auction. A Qualified Bidder also will be asked to certify that it has not and will not come to any agreement with another Qualified Bidder with respect to bidding in the auction, except as disclosed and approved by the Auction Manager in its Part 1 Application.
- VIII.1.3.** If a bidder cannot make all the certifications required, the Auction Manager will decide within five (5) days following the deadline to submit the Part 2 Application on a course of action on a case-by-case basis. To decide on this course of action, the Auction Manager may make additional inquiries to understand the reason for the inability of the bidder to make the certification. The Rules and Protocols for Participation by Associated Bidders provide specific procedures that will be followed when bidders that are associated with one another submit the Part 1 and Part 2 Applications to participate in an auction.
- VIII.1.4.** If Qualified Bidders do not comply with additional information requests by the Auction Manager regarding certifications required in the Part 2 Application, the Auction Manager may reject the application.
- VIII.1.5.** Sanctions may be imposed on bidders for failing to properly disclose information relevant to determining associations, for coordinating with another bidder without disclosing this fact, for releasing Confidential Information or disclosing information during the auction (aside from only the specific exceptions provided above with respect to entities explicitly named in the Part 1 Application as entities that are part of a bidding agreement or other arrangement, to an Advisor; or bidders with which it is associated). Such sanctions can include, but are not limited to, any one or more of the following: termination of the Master Energy Supply Agreement; the loss of all rights to provide tranches won by such bidder; the forfeiture of letters of credit and other fees posted or paid; action (including prosecution) under applicable state and/or federal laws; attorneys' fees and court costs incurred in any litigation that arises out of the bidder's improper disclosure; debarment from participation in future competitive bidding processes; and/or other sanctions that may be appropriate. In such an event,

## Associations and Handling of Confidential Information

the Auction Manager, in its report submitted to the Commission at the conclusion of the auction, will make a recommendation on a possible sanction.

### VIII.2. Confidential Information

- VIII.2.1. Confidential Information relative to bidding strategy means information relating to a bidder's bid(s) in the auction, whether in writing or verbally, which if it were to be made public likely would have an effect on any of the bids that another bidder would be willing to submit. Confidential Information relative to bidding strategy includes (but is not limited to): a bidder's strategy; a bidder's indicative offer; the quantities that a bidder wishes to supply; the bidder's estimation of the value of a tranche; the bidder's estimation of the risks associated with supplying energy associated with a tranche; and a bidder's contractual arrangements for purchasing power to supply such energy were the bidder to win tranches in the auction.
- VIII.2.2. Confidential Information regarding the auction means information that is not released publicly by the Commission, AEP Ohio, or the Auction Manager and that a bidder acquires as a result of participating in the auction, whether in writing or verbally, which if it were to be made public could impair the integrity of current or future competitive bidding processes, impair the ability of AEP Ohio to hold future competitive bidding processes, or harm consumers, bidders or applicants. Confidential Information regarding the auction includes (but is not limited to): the list of Qualified Bidders, the list of Registered Bidders, the initial eligibility, the status of a bidder's participation, and all non-public reports of results and announcements made by the Auction Manager to any or all bidders in this auction.
- VIII.2.3. Absolute protection from public disclosure of the bidders' data and information filed in this auction process cannot be provided. By participating in this auction process, each bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.
- VIII.2.4. In addition, the bidder agrees the bidder's data and information submitted in this auction process will be disclosed if required by any federal, state or local agency (including, without limitation, the Commission) or by a court of competent jurisdiction. However, AEP Ohio will endeavor to notify the bidder in advance of such disclosure. In any event, neither AEP Ohio nor the Auction Manager, nor any of their employees or agents, will be responsible to the bidders or any other party, or liable for any disclosure of such designated materials before, during or subsequent to this auction. Notwithstanding the above, AEP Ohio and the Auction Manager reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted as part of this auction process in any proceedings before FERC, the Commission, and any other regulatory body and the courts, if necessary, without the prior consent/approval of, or notice to, any such bidder.

### VIII.3. Certifications and Disclosures – Part 1 Application

- VIII.3.1. Each bidder must disclose any bidding agreement or any other arrangement in which the prospective bidder may have entered and that is related to its participation in the auction. A prospective bidder that has entered into such an agreement or arrangement must name the entities with which the prospective bidder has entered into a bidding



## Associations and Handling of Confidential Information

agreement, or a joint venture for the purpose of participating in the auction, or a bidding consortium, or any other arrangement pertaining to participating in the auction. A bidding consortium is a group of separate businesses or business people joining together to submit joint bids in the auction.

- VIII.3.2. Each bidder must certify that if the bidder qualifies to participate in the auction, the bidder will not disclose at any time information regarding the list of Qualified Bidders, including but not limited to the number of Qualified Bidders, the identity of any one of the Qualified Bidders (including the bidder itself), or the fact that an entity has not qualified for participation in the auction. A bidder unable to make this certification must identify the entity receiving such information and must explain the reasons for such disclosure.
- VIII.3.3. Each bidder must certify that it agrees to destroy any document distributed by the Auction Manager that lists the Qualified Bidders within five (5) days of the decision on auction results by the Commission, or earlier if so instructed by the Auction Manager.
- VIII.3.4. Each bidder must certify not to disclose any Confidential Information relative to bidding strategy to any party that may have an effect on the participation of another bidder, prospective bidder, or on any of the bids that another bidder would be willing to submit. A bidder unable to make this certification must identify the entity receiving such information and must explain the reasons for such disclosure.
- VIII.3.5. Each bidder must certify that, to the extent Confidential Information relative to bidding strategy is disclosed within the bidder's organization or to a third party, the bidder will ensure that sufficient precautions are taken to ensure that such Confidential Information is not made public or made available to another bidder. Such precautions include, but are not limited to confidentiality agreements, non-disclosure agreements, firewalls, and other contractual or structural protections that would maintain the confidential nature of a bidder's bidding strategy. If unable to make this certification, the bidder is required to identify and explain any instances where such precautions were not taken and any breach of confidentiality that may have occurred as a result.

### VIII.4. Certifications and Disclosures – Part 2 Application

- VIII.4.1. A Qualified Bidder is associated with another Qualified Bidder if the two bidders have ties that could allow them to act in concert or that could prevent them from competing actively against each other. The competitiveness of the auction and the ability of the auction to produce competitive prices may be harmed by the coordinated or collusive behavior that associations facilitate. As the Auction Manager relies on a number of factors to assess and promote competitive bidding, including the number of independent bidders, using inaccurate information or insufficient disclosure of associations in the Part 2 Application is prohibited.
- VIII.4.2. Each bidder will consult the list of Qualified Bidders provided with the Part 1 Notification in order to determine whether it can make the certifications. Unless noted otherwise, the certifications apply from the time of qualification of bidders until the decision on auction results by the Commission.

## Associations and Handling of Confidential Information

- VIII.4.3. Each bidder must certify that it is not associated with another Qualified Bidder. A bidder that is unable to make this certification must identify the Qualified Bidder(s) with which it is associated and the nature of the association.
- VIII.4.4. Each bidder must certify that, other than parties explicitly named in the Part 1 Application as parties with whom it has entered into a bidding agreement, joint venture for the purpose of bidding in the auction, or bidding consortium or other arrangement pertaining to bidding in the auction, the bidder has not entered into any agreement with another Qualified Bidder, directly or indirectly, regarding bids in the auction, including, but not limited to, the amount to bid at certain prices, when or at what prices bids are to be withdrawn, or the amount of exit prices.
- VIII.4.5. An Advisor is an entity or person(s) that will be advising or assisting a bidder with bidding strategy in the auction, with estimation of the value of tranches, or with the estimation of the risks associated with providing Energy Supply. Each bidder must certify to one of the following: (i) the bidder has not retained an Advisor; or (ii) the bidder has retained an Advisor, the Advisor will not provide any similar advice or assistance to any other Qualified Bidder, and the Advisor will not be privy to Confidential Information relative to another Qualified Bidder's bidding strategy; or (iii) the bidder has retained an Advisor who will provide similar advice or assistance to another Qualified Bidder, or who will be privy to Confidential Information relative to another Qualified Bidder's bidding strategy, but appropriate protections have been put into place to ensure that the Advisor does not serve as a conduit of information between, or as a coordinator of the bidding strategies of, multiple bidders. A bidder that is unable to make this certification must name the Advisor and the Qualified Bidder(s) concerned.
- VIII.4.6. Each bidder must certify that it is not a party to any contract for the purchase of power that might be used as a source for Energy Supply, and that (i) would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the auction) to the counterparty under such a contract; or (ii) that would require the disclosure of any Confidential Information (Confidential Information relative to the bidding strategy or Confidential Information regarding the auction) to any other party; or (iii) that would provide instructions, direct financial incentives, or other inducements for the bidder to act in a way determined by the counterparty in the agreement and/or in concert with any other Bidder in the auction. Notwithstanding the above, a bidder may, during negotiations prior to the auction for contractual arrangements as a source for Energy Supply were the bidder to be a winner at the auction, discuss with the counterparty to such arrangements the nature of the standard products to be purchased, the volume, and the price at which the bidder is willing to buy these products, so long as such arrangements do not result in violation of (i), (ii) or (iii) above. A bidder that is unable to make this certification must disclose the contractual terms that prevent the bidder from making the certification, identify the counterparty, and if applicable, the party to whom information disclosure must be made under the terms of the contract.
- VIII.4.7. Each bidder must certify that it does not have any knowledge of Confidential Information relative to the bidding strategy of any other Qualified Bidder. A bidder that is unable to make this certification must name the other Qualified Bidder(s) and the nature of the Confidential Information.

## Associations and Handling of Confidential Information

- VIII.4.8. Each bidder must certify that it will not disclose Confidential Information relative to its bidding strategy except to bidders that were explicitly named in the Part 1 Application as parties with which it has entered into a bidding agreement, joint venture for the purpose of bidding in the auction, or bidding consortium or other arrangement pertaining to bidding in the auction, bidders with which it is associated as disclosed in the Part 2 Application, to its Advisors, and to its financial institution. A bidder that is unable to make this certification must name the party to whom disclosure would be made and must provide an explanation of why such disclosure is necessary.
- VIII.4.9. Each bidder must certify that, other than entities with which it is affiliated and other than bidders with which it has entered into a bidding agreement, or joint venture for purposes of the auction, or bidding consortium, or other arrangement pertaining to the auction, no party has agreed to defray any of the costs of participating in the auction, including the cost of preparing the bid, the cost of any financial guarantees, or any other participation cost. A bidder that is unable to make this certification must identify the party defraying the participation cost and the bidder must provide an explanation.
- VIII.4.10. Each bidder must agree that the submission of any bid in the auction creates a binding and irrevocable offer to provide the slice-of-system energy-only product under the terms set forth in the Master Energy Supply Agreement and that a binding and enforceable contract to provide Energy Supply with respect to the number of tranches that the bidder wins in the auction shall arise under the Master Energy Supply Agreement. The bidder is reminded that failure to execute the Master Energy Supply Agreement within three (3) days of the acceptance of the auction results by the Commission may result in the forfeiture of the Pre-Bid Letter of Credit.
- VIII.4.11. The certifications in the following paragraphs apply from the date on which the certifications are made.
- VIII.4.12. Each bidder must certify that if the bidder is registered to participate in the auction, the bidder will not disclose at any time information regarding the initial eligibility across all bidders in the auction or the list of Registered Bidders, including the number of Registered Bidders, the identity of any one or all entities that have been registered, or the fact that an entity has not been registered for participation in the auction. A bidder that is unable to make this certification must name the party to whom disclosure would be made and must provide an explanation of why such disclosure is necessary.
- VIII.4.13. Each bidder must certify that the bidder will not disclose any Confidential Information regarding the auction to any party except to its Advisors and to bidders with which the bidder is associated as disclosed in the Part 2 Application. A bidder that is unable to make this certification must name the party to whom disclosure would be made and must provide an explanation of why such disclosure is necessary.
- VIII.4.14. Each bidder must certify that the bidder will destroy all documents, written or electronic, provided by the Auction Manager that contain Confidential Information regarding the auction within five (5) days of the decision on results by the Commission, or earlier if so instructed by the Auction Manager. A bidder that is unable to make this certification must provide an explanation.

**VIII.5. Miscellaneous**

- VIII.5.1. The Commission may publicly release the auction clearing price and the names of the winning bidders from the auction. The Commission may choose to release additional information.
  
- VIII.5.2. After acceptance of the results, a winning bidder itself may release information regarding the number of tranches it has won, and a non-winning bidder itself may release information only regarding the fact that it participated in the auction. The winning bidders and the non-winning bidders otherwise continue to be bound by their certifications as described previously. In particular, no winning bidder and no non-winning bidder itself can reveal the auction clearing prior to release of such information by the Commission.

**ARTICLE IX. Miscellaneous**

**IX.1. Warranty on Information**

IX.1.1. The information provided for the auction, including but not limited to information provided on the CBP website, has been prepared to assist bidders in evaluating the auction process. It does not purport to contain all the information that may be relevant to a bidder in satisfying its due diligence efforts. Neither AEP Ohio nor the Auction Manager make any representation or warranty, expressed or implied, as to the accuracy or completeness of the information, and shall not, either individually or as a corporation, be liable for any representation expressed or implied in the auction process or any omissions from the auction process, or any information provided to a bidder by any other source. A bidder should check the CBP website frequently to ensure it has the latest documentation and information. Neither AEP Ohio, nor the Auction Manager, nor any of their representatives, shall be liable to a bidder or any of its representatives for any consequences relating to or arising from the bidder's use of information.

**IX.2. Hold Harmless**

IX.2.1. Bidder shall hold AEP Ohio and the Auction Manager harmless of and from all damages and costs, including but not limited to legal costs, in connection with all claims, expenses, losses, proceedings or investigations that arise in connection with the auction process or the award of a bid pursuant to the auction process.

**IX.3. Bid Submissions Become AEP Ohio's Property**

IX.3.1. All bids submitted by bidders participating in the auction will become the exclusive property of AEP Ohio upon conclusion of the auction process.

**IX.4. Bidder's Acceptance**

IX.4.1. Through its participation in the auction process, a bidder acknowledges and accepts all the terms, conditions and requirements of the auction process and the Master Energy Supply Agreement.

**IX.5. Permits, Licenses, Compliance with the Law and Regulatory Approvals**

IX.5.1. Bidders shall obtain all licenses and permits and status that may be required by any governmental body, agency or organization necessary to conduct business or to perform hereunder. Bidders' subcontractors, employees, agents and representatives of each in performance hereunder shall comply with all applicable governmental laws, ordinances, rules, regulations, orders and all other governmental requirements.

**NERA**

Economic Consulting

# **EXHIBIT B**

**Rules and Protocols for  
Participation by Associated  
Bidders in Auctions Under  
Ohio Power Company's  
("AEP Ohio's") CBP**

**December 21, 2012**



## **1. INTRODUCTION**

As outlined in the Bidding Rules for the auctions under Ohio Power Company ("AEP Ohio") Competitive Bidding Process ("CBP"), the competitiveness of an auction may be compromised by the coordinated or collusive behavior that bidding associations may facilitate. As a result, the Auction Manager has developed standards that apply when associated parties apply to participate in an auction. The following sections outline the specific protocols that will be followed when associated entities submit Part 1 and/or Part 2 Applications to participate in an auction under AEP Ohio's CBP.

## **2. PROCEDURE**

Potential associations among Qualified Bidders may come to the attention of the Auction Manager at different points in the application process. In order to improve the process efficiency and minimize the risk of disclosure of potentially confidential information, the Auction Manager will approach each case as described below.

### **2.1. Following the Receipt of the Part 1 Applications**

Potential associations among applicants may become apparent after the Part 1 Application but before Qualified Bidders are required to disclose such associations as part of the Part 2 Application. The Auction Manager will take no action related to potential associations until each party submits their completed Part 1 Application. In cases where there is an apparent relationship among applicants, the Auction Manager will initiate a request for additional information regarding the relationship among the potentially associated parties, the structure of their organization, and the independence of the respective bidding teams.

In such cases, the Auction Manager will notify representatives of AEP Ohio, Commission Staff, and the Commission Consultant that there is a potential association among applicants.

In addition, the Auction Manager reserves the right to request additional information from each party at the Part 2 Application stage including, but not necessarily limited to:

- a. Information on how the entity maintains its independence from the associated party including any available supporting documentation such as a Corporate Separation Agreements, Codes of Conduct, and/or organization charts;
- b. A list of individuals within the organization who have played or will play a material role in the auction;
- c. Information regarding the nature of any work done in conjunction with or on behalf of the associated party;
- d. Information describing the organizational structure of the associate(s), identifying common management and oversight among the associated entities as well as the management involved in or responsible for bid approval;

- e. The internal process or protocol related to determining indicative offers submitted as part of the Part 2 Application; and,
- f. Disclosure of whether the entity is bidding on behalf of itself or acting as an agent for other entities.

Any responses to the above will be treated as confidential if labeled as such.

## **2.2. Following the Receipt of the Part 2 Applications**

In some cases, the potential relationship among Qualified Bidders will not be known to the Auction Manager until the Qualified Bidders submit final certifications along with their Part 2 Applications. In such cases, the Auction Manager will initiate the steps outlined above in Section 2.1 upon receipt of the completed Part 2 Applications.

After the Auction Manager has requested and received additional information from each bidder, the Auction Manager will determine, in consultation with Commission Staff and the Commission Consultant:

- a. Whether each of the associated bidders will be allowed to independently participate in the auction; and
- b. Any restrictions that may be applied as a result of the participation by associated bidders.

Any restrictions will be based on the information provided by the associated bidders as part of the Part 1 Application, the Part 2 Application, and the additional information that was provided at the request of the Auction Manager.

## **3. REMEDIES AND ACTIONS RELATED TO PARTICIPATION BY ASSOCIATED BIDDERS**

This section summarizes the potential restrictions that will be considered by the Auction Manager, in consultation with Commission Staff, and the Commission Consultant, in relationship to associated participation. Restrictions on participation may include, but may not be limited to, the following:

- a. Indicative offers may be restricted such that any applicable load cap or credit based tranche cap may apply across the associated bidders;
- b. Pre-bid security or collateral requirements may be altered for the associated bidders to ensure that associates do not gain a competitive advantage over other bidders; and,
- c. In some cases, one or more associated bidders may not be allowed to participate in the auction.

## **4. HANDLING OF CONFIDENTIAL INFORMATION**

In order to execute the process of gathering information on associated entities and executing the remedies outlined in Section 3, there may be situations that require the Auction Manager to

share, directly, certain confidential information among the associated parties, AEP Ohio, the Commission and its staff and/or the Commission Consultant.

In addition, as part of the remedies outlined in Section 3, an associated party may gain access to or be able to ascertain certain confidential information of the other associated entities. While access to such information is counter to certain certifications in the Part 2 Application, access to such information acquired through the data gathering and remedies related to associated bidders will not be considered a violation of the Bidding Rules.<sup>1</sup>

Confidential information includes but may not be limited to the initial eligibility for each associated bidder based on indicative bids submitted with the Part 2 Application. The Auction Manager will make all efforts to minimize the disclosure of any such confidential information.

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<sup>1</sup> A bidder is required in the Part 2 Application to certify that it does not have any knowledge of Confidential Information relative to the bidding strategy of any other Qualified Bidder.

# **EXHIBIT C**

**MASTER ENERGY SUPPLY AGREEMENT**

**BY AND BETWEEN**

**OHIO POWER COMPANY**

**AND**

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

\_\_\_\_\_, 2013

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## MASTER ENERGY SUPPLY AGREEMENT

This Master Energy Supply Agreement (“Agreement”), dated as of \_\_\_\_\_, 2013 (“Effective Date”), is by and between Ohio Power Company, an Ohio corporation with offices at 1 Riverside Plaza, Columbus, Ohio (“AEP Ohio”) and each of the suppliers listed on Attachment A severally, but not jointly, (each an “Energy Supplier” and collectively “Energy Suppliers”). AEP Ohio and each Energy Supplier are hereinafter referred to individually as a “Party” or collectively as the “Parties”).

### RECITALS

**WHEREAS**, AEP Ohio is an Ohio public utility that engages, inter alia, in providing Standard Service Offer supply within its service territory; and

**WHEREAS**, the PUCO found that it would serve the public interest for AEP Ohio to secure a percentage of Energy Supply through a competitive bidding process; and

**WHEREAS**, on \_\_\_\_\_, 2013 AEP Ohio conducted and completed a successful Solicitation for a percentage of its Energy Supply; and

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

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

**WHEREAS**, AEP Ohio shall be responsible 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; and

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

“AEP Load Zone” means that set of electrical locations, designated by PJM as Pnode ID number 8445784, determined pursuant to the applicable PJM Tariff, rules, agreements and procedures, representing the aggregate area of consumption that includes AEP 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.

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

“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 Hourly Energy Share Adjustment if in favor of AEP Ohio, or any other amount that is billable by AEP Ohio to the Energy Supplier under this Agreement.

“Commercial/Industrial Customer” means a Customer taking service under one of AEP Ohio’s non-residential rates (Ohio Power Rate Zone: Rate GS-1, Rate GS-2,); Rate GS-3, Rate GS-4, Rate GS-TOD, Rate COGEN/SPP, Rate SBS, Rate EHG, Rate EHS, or Rate SS; Columbus Southern Power Rate Zone: Rate GS-1, Rate GS1-TOD, Rate GS2, Rate GS-3, Rate GS-4, Rate GS-2-TOD, Rate COGEN/SPP or Rate SBS).

“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 AEP Ohio and the applicable Energy Supplier.

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

“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 Energy Supply hereunder and the price at which AEP Ohio or the Energy Supplier is able to purchase or sell (as applicable) Energy Supply from or to third parties including other Energy Suppliers and PJM; (ii) Emergency Energy charges; (iii) additional transmission or congestion charges incurred to purchase or sell Energy 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 AEP Load Zone as defined within PJM.

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

“Early Termination Date” means, as between AEP Ohio and the applicable Energy 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 AEP Ohio, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair AEP Ohio’s electrical system or the electrical system(s) of other Person(s) to which AEP Ohio’s electrical system is directly or indirectly connected (a “Connected Entity”). Such a condition or situation may include potential overloading of AEP Ohio’s subtransmission or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either AEP Ohio’s or a Connected Entity’s electrical system, or conditions such that AEP Ohio is unable to accept Energy from the Energy Supplier without jeopardizing AEP 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 Load” means the Energy requirements of SSO Customers, as estimated by AEP Ohio for each hour and scheduled prior to the daily scheduling deadline established by the PJM Agreements (which generally is the close of the first Business Day following the applicable operating day). Energy Load will include all transmission and distribution losses, and shall be derated by PJM for marginal losses.

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

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

“Energy Supply” means Energy delivered to the Delivery Point in order to meet the Energy requirements of the Energy Load. Energy Supply will be scheduled pursuant to Article IV.

“Estimated Hourly Energy Share” means a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the preliminary calculation of the Energy Supplier’s Energy Supplier Responsibility Share for that hour. The Estimated Hourly Energy Share will be determined by AEP Ohio in a commercially reasonable manner for each hour prior to the daily InSchedule deadline for that hour established by the PJM Agreements (which generally is the close of the first Business Day following the operating day) using the best data then available.

“Estimated Monthly Energy Share” means a quantity of Energy expressed in MWh which, for any Billing Period, is the preliminary calculation of the Energy Supplier’s Energy Supplier Responsibility Share. The Estimated Monthly Energy Share will be equal to the sum of the Estimated Hourly Energy Shares for each hour that Energy is scheduled for delivery during each Billing Period.

“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 Hourly Energy Share” means a quantity of Energy expressed in MWh which, for any hour on any day of the Delivery Period on which Energy Supply is required to be delivered, is the Estimated Hourly Energy Share for that hour adjusted for any estimation, billing or metering errors identified within sixty (60) days of the applicable operating day. For any hour in which the Final Hourly Energy Share is not less than 80% nor more than 120% of the Estimated Hourly Energy Share for that hour, the Final Hourly Energy Share shall equal the Estimated Hourly Energy Share.

“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 AEP 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 Energy Supplier’s financial obligations under this Agreement, provided that such party meets AEP Ohio’s creditworthiness requirements for Energy Suppliers.

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

“Hourly Energy Share Adjustment” means for any Billing Period, the monetary amount due to an Energy Supplier or AEP Ohio, as the case may be, in order to reconcile any difference between the Estimated Hourly Energy Shares used for the purpose of calculating estimated payments made to such Energy Supplier for a given month and the Final Hourly Energy Shares

used for calculating the final payments due to the Energy Supplier for such hour, as more fully described in Article 6. The Hourly Energy Share Adjustment will equal the net sum, for each hour that Energy is scheduled for delivery during each Billing Period, of the Price multiplied by the Applicable Seasonal Billing Factor minus the PJM Real-Time LMP multiplied by the Final Hourly Energy Share minus the Estimated Hourly Energy Share. A positive Hourly Energy Share Adjustment will be due to the Energy Suppliers and a negative Hourly Energy Share Adjustment will be due to AEP Ohio.

“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 AEP Ohio guaranteeing an Energy 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 AEP Ohio of Energy price movements between the date of an Early Termination caused by an Event of Default by an Energy Supplier and the date the final calculation of Default Damages owing to AEP Ohio under Section 7.2(c) is made.

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

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

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

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

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

“Letter of Credit” means a standby irrevocable letter of credit in the form set forth in Attachment E, or in such other form as AEP 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 AEP Ohio’s lighting rates (Ohio Power Rate Zone: Rate AL or Rate SL; Columbus Southern Power Rate Zone: Rate AL or Rate SL).

“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 Energy 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).

“Margin Interest Rate” means the 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 at: <http://federalreserve.gov/releases/h15/update/>, or its successor.

“Mark-to-Market Exposure Amount” means an amount calculated daily for each Energy Supplier reflecting the exposure to AEP 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.

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

“Minimum Rating” means a minimum senior unsecured debt rating (or, if unavailable, corporate or issuer 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 Energy Supplier is the Defaulting Party, AEP Ohio; (ii) where AEP Ohio is the Defaulting Party with respect to an Event of Default, the Energy 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 Energy 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 AEP 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 E-Account” means an account obtainable through PJM which provides access to web-based PJM scheduling, 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 Energy Supplier, the price in \$/MWh set forth in Attachment A, resulting from AEP Ohio’s Solicitation for the opportunity to provide Energy Supply. The Price is the basis for financial settlement of Energy Supply supplied by an Energy 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 AEP Ohio’s residential rates (Ohio Power Rate Zone: Rate RS, Rate RS-ES, Rate RS-TOD or Rate RDMS; Columbus Southern Power Rate Zone: Rate R-R, Rate R-R-1, Rate RLM, Rate RS-ES, Rate RS-TOD, Rate RS-TOD2, Rate CPP or Rate RS-RTP).

“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 AEP Ohio’s payments to Energy 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 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 Energy Load for un-switched customers as of the Early Termination Date based on the then most recent load switching report filed by AEP 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).

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

“Special Contract Customers” means Customers that take retail generation service from AEP 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.

“SSO Customers” means Residential Customers, PIPP Customers, Commercial/Industrial Customers, Lighting Customers, Special Contract Customers, and any other Customer taking retail generation service from AEP Ohio, but excluding replacement Energy provided to interruptible service customers during AEP Ohio requested interruptions.

“Standard Service Offer” means a standard service offer provided by AEP Ohio under PUCO tariffs of all competitive retail electric services necessary to maintain essential electric service to



Customers, including 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 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 Energy Supplier reflecting the total credit exposure to AEP 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 Energy Supply Agreement; and (iii) the amount designated as the “credit exposure” (or similar designation) under any Other Energy Supply Agreement; less (iv) amounts due to such Energy 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 AEP Ohio guaranteeing an Energy Supplier’s financial obligation with respect to its Total Exposure Amount.

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

Suppliers will commence on \_\_\_\_\_, 2013 at 12:01 a.m. prevailing Eastern Time and end on May 31, 2015.

**2.2 Mutual Termination**

AEP Ohio and any Energy 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 Energy Supplier’s Obligations to Provide Energy Supply and Other Obligations**

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

(a) during the Delivery Period, such Energy Supplier shall sell, deliver, schedule (in accordance with Section 4.1(c)) and provide Energy Supply on a firm and continuing basis in order to meet its Energy Supplier Responsibility Share, in accordance with this Agreement and the PJM Agreements;

(b) [Intentionally Omitted];

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

(d) each Energy Supplier shall be responsible for all costs and expenses related to the scheduling and delivery of Energy Supply at the Delivery Point in proportion to its Energy Supplier Responsibility Share;

(e) during the Term, each Energy Supplier is responsible, at its sole cost and expense, for any changes in PJM products and pricing required for the delivery of its Energy Supplier Responsibility Share;

(f) [Intentionally Omitted];

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

(h) [Intentionally Omitted]; and

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

### **3.2 AEP Ohio's Obligation to Take Energy Supply and other Obligations**

AEP Ohio hereby agrees as follows:

(a) during the Delivery Period, AEP Ohio shall purchase and receive, or cause to be received, the Energy Supply provided by an Energy Supplier pursuant to Section 3.1 at the Delivery Point and shall make payment to the Energy Supplier based on the Price; and

(b) during the Delivery Period, AEP Ohio shall be a member in good standing of PJM.

(c) [Intentionally Omitted].

(d) [Intentionally Omitted].

(e) [Intentionally Omitted].

(f) [Intentionally Omitted].

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

Each Energy Supplier and AEP Ohio shall work with PJM to establish any PJM E-Accounts necessary for such Energy Supplier to provide Energy Supply. Each Energy Supplier may manage its PJM E-Accounts in its sole discretion; provided such Energy 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) AEP Ohio and each Energy Supplier shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform their respective obligations under this Agreement.

(b) Each Energy Supplier shall cooperate in good faith with AEP 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 Energy Supply before the PUCO, FERC or any other Governmental Authority.

### **3.6 [Intentionally Omitted]**

**3.7 Intentionally Omitted**

**3.8 Sales for Resale**

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

**ARTICLE 4**

**SCHEDULING, FORECASTING AND INFORMATION SHARING**

**4.1 Scheduling**

(a) Subject to subsection (c), each Energy Supplier shall schedule Energy Supply and make all necessary arrangements for the delivery of Energy Supply through the PJM Office of Interconnection pursuant to the PJM Agreements.

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

(c) Energy Supply will be scheduled and reported by each Energy Supplier and AEP Ohio to PJM as a bilateral transaction for the physical transfer of Energy, as follows:

(i) AEP Ohio and each Energy Supplier will bilaterally establish and confirm a contract ("Contract") in PJM's InSchedule system, or a successor PJM E-Account system ("InSchedule"), related to this Agreement. The Contract will have the following attributes: (1) AEP Ohio will be designated as "Buyer" and the Energy Supplier as "Seller"; (2) the "Schedule Confirmation Type" will be "Unilateral Buyer," such that AEP Ohio will have unilateral schedule confirmation rights for all schedules between the parties; (3) the "Sink" will be the Delivery Point; (4) the "Pricing" will be designated as "Day-Ahead", such that settlement of schedules will occur at Day-Ahead pricing for each hour; (5) the "Service Type" will be "Internal Bilateral Transaction" ("IBT"); and (6) other attributes consistent with each Party's obligations under this Agreement.

(ii) Only AEP Ohio will have the right to create new schedules and make changes to schedules in InSchedule. For each day during the Delivery Period on which Energy Supply is required to be delivered under this Agreement, AEP Ohio will establish a unilateral schedule in InSchedule for each Energy Supplier equal to its Estimated Hourly Energy Share for each one-hour increment of the selected day in MWh, rounded to the nearest 0.001 MWh. AEP Ohio will enter the schedule for each day as soon as practical but will have the right to enter, delete and modify the schedule for each day up until the daily InSchedule deadline established by the PJM Agreements (which generally is the close of the first Business Day following the day of flow).

(iii) Any deviations from the foregoing procedures are subject to written approval of AEP Ohio and the applicable Energy Supplier(s).

#### **4.2 Load Forecasting**

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

#### **4.3 Disconnection and Curtailment by AEP Ohio**

AEP Ohio shall have the right, without incurring any liability to any Energy Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the Energy Suppliers or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever AEP 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 AEP Ohio's facilities; or due to any other reason affecting the safe and reliable operation of any of AEP Ohio's or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of AEP Ohio's transmission or distribution circuits, potential damage to the Customer's facilities or any risk of injury to persons, or when AEP Ohio is directed by PJM. AEP 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 AEP Ohio affecting the transmission and distribution facilities of AEP 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.

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

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

### **ARTICLE 5**

#### **CREDIT AND PERFORMANCE SECURITY**

##### **5.1 Applicability**

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

During the Term, each Energy 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 Energy 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**

AEP Ohio will determine the creditworthiness of an Energy 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). AEP Ohio will have full discretion, without liability or recourse to such Energy Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such Energy Supplier or Guarantor. AEP Ohio may re-evaluate the creditworthiness of an Energy Supplier or Guarantor from time to time, including whenever it becomes aware of an adverse change in such Energy Supplier's or Guarantor's credit standing. In addition, the Energy Supplier may petition AEP Ohio to re-evaluate its creditworthiness whenever an event occurs that the Energy Supplier reasonably believes would improve the determination made by AEP Ohio of its or its Guarantor's creditworthiness. AEP 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. AEP 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. AEP Ohio shall perform its credit re-evaluation and associated security calculation in a non-discriminatory manner. Each Energy Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, AEP Ohio may specify other types of financial statements that will be accepted. If AEP Ohio determines in its sole discretion that it is unable to adequately assess an Energy Supplier's or Guarantor's creditworthiness or the credit rating of an Energy Supplier or its Guarantor is insufficient, such Energy 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 Energy 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 Energy Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold (“ICT”).

(a) For an Energy 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 Energy Supplier to be granted an ICT:

(i) the Energy 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 Energy Supplier or its Guarantor is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the Energy 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. If the Energy Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of Energy Supply, then the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the ICT using the highest rating as determined for the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s). The maximum level of the ICT will be determined based on the following table:

Credit Rating of the Energy Supplier or its Guarantor			Maximum Independent Credit Threshold (calculated as the lesser of the percentage of TNW and the applicable Independent Credit Threshold Cap below)	
S&P	Moody's	Fitch	Percentage of TNW	Independent Credit Threshold 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 Energy 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 Energy Supplier will not exceed the amount of the ICT Guaranty. The ICT Guaranty tendered by the Energy 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 Energy 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 Energy 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 Energy Supplier to be granted an ICT:

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

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

(c) All Energy Suppliers or Guarantors of Energy 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 AEP Ohio as a condition of being granted an ICT:

(i) for an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Energy Supplier is organized that (A) the Energy Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the Energy Supplier in such foreign jurisdiction and does not violate any local law or the Energy 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 Energy Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Energy Supplier that the Person executing this Agreement on behalf of the Energy Supplier has the authority to execute this Agreement and that the governing board of such Energy Supplier has approved the execution of this Agreement. AEP Ohio will have full discretion, without liability or recourse to the Energy Supplier, to evaluate the sufficiency of the documents submitted by the Energy Supplier; or

(ii) for the Guarantor of an Energy 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. AEP Ohio will have full discretion, without liability or recourse to the Guarantor or the Energy Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

(d) Energy 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 Energy Supply Agreement (the "ICR Collateral") does not meet its aggregate ICR under this Agreement and any Other Energy 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 Energy Supply Agreement exceeds its ICT.

(e) Under no circumstances shall the ICT hereunder plus any other independent credit threshold granted to the Energy Supplier or its Guarantor under any Other Energy Supply Agreement exceed the maximum ICT hereunder.

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

To calculate the Mark-to-Market Exposure Amount for each Energy 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 Energy 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 Energy 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 AEP Ohio, as adjusted by AEP Ohio to more closely approximate the price impact of serving a slice-of-system product 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 AEP Ohio using any method which AEP 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 Energy 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 AEP Ohio's creditworthiness requirements for the Energy Suppliers to cover the Total Exposure Amount:

(a) For Energy Suppliers to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other Performance Assurance acceptable to AEP Ohio, in the case of an Energy Supplier organized under the laws of the United States, the Energy 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 Energy Supplier is rated by only two rating agencies and the ratings are split, the lower rating will be used. If the Energy 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 Energy Supplier and an Affiliate(s) are both winning bidders in the Solicitation for the provision of Energy Supply, then the Energy Supplier or its Guarantor, as applicable, and the Affiliate(s) will proportionally share the maximum level of the Credit Limit using the highest rating as determined for the Energy Supplier or its Guarantor, as applicable, 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 Energy 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%	\$75,000,000
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%	\$10,000,000
BB	Ba2	BB	1%	\$5,000,000
BB- and below	Ba3 and below	BB- and below	0%	\$0

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

(b) For Energy 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 Energy Supplier will not exceed the amount of the Total Exposure Amount Guaranty.

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

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

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

(d) All Energy Suppliers or Guarantors of Energy 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 AEP Ohio:

(i) For an Energy Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the Energy Supplier is organized that (A) the Energy Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the Energy Supplier in such foreign jurisdiction and does not violate any local law or the Energy 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 Energy Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such Energy Supplier that the Person executing this Agreement on behalf of the Energy Supplier has the authority to execute this Agreement and that the governing board of such Energy Supplier has approved the execution of this Agreement. AEP Ohio will have full discretion, without liability or recourse to the Energy Supplier, to evaluate the sufficiency of the documents submitted by the Energy Supplier; or

(ii) For the Guarantor of an Energy 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. AEP Ohio will have full discretion, without liability or recourse to the Guarantor or the Energy Supplier, to evaluate the sufficiency of the documents submitted by such Guarantor.

For an Energy Supplier with a Total Exposure Amount Guaranty, the Energy 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 AEP Ohio on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to AEP Ohio during the Term. The Energy 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 AEP Ohio has made a demand of the Energy Supplier to cover Margin (a "Margin Call") but before the Energy Supplier has provided AEP Ohio with cash credited to a deposit account of AEP 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 Energy Supplier may increase the amount of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon AEP Ohio's receipt of an amended or substitute Total Exposure Amount Guaranty increasing the amount of the Total Exposure Amount Guaranty, the Energy



Supplier may request a return of Margin Collateral in accordance with Section 5.7. The Energy Suppliers will be required to post cash or a Letter of Credit for the Margin due AEP Ohio as set forth in Section 5.7 of this Agreement.

(e) Under no circumstances shall the Credit Limit hereunder plus any other credit limit granted to the Energy Supplier or its Guarantor under any Other Energy 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 Energy Supplier, then AEP Ohio on any Business Day may make a Margin Call of such Energy Supplier; provided however that AEP Ohio may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable Energy Supplier shall provide to AEP 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 Energy Supplier in which AEP Ohio has a first priority, perfected security interest to secure the obligations of the Energy Supplier under this Agreement and any Other Energy Supply Agreement. For the avoidance of doubt, any ICR Collateral posted pursuant to Section 5.4 shall not constitute Margin Collateral.

If an Energy Supplier receives a Margin Call from AEP Ohio by 1:00 p.m. prevailing Eastern Time on a Business Day, then such Energy 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 AEP Ohio agrees in writing to extend the period to provide Margin Collateral. If the Energy 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 Energy Supplier must post Margin Collateral on the second Business Day following the Margin Call unless AEP Ohio agrees in writing to extend the period to provide Margin Collateral. AEP Ohio will not unreasonably deny a request for a one-day extension of such period.

Margin Collateral being held by AEP Ohio that is not needed to satisfy the Margin (“Excess Collateral”), will be returned to the Energy Supplier upon receipt of a written request

from the Energy Supplier; provided, however, that the Energy Supplier may not request Excess Collateral until such Excess Collateral exceeds the Minimum Margin Threshold. If the Energy 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 Energy Supplier posted cash and notice is received by AEP 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 Energy 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 Energy Supplier agrees in writing to extend such period for returning the Excess Collateral. The Energy 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 Energy Supplier hereby grants to AEP Ohio a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of AEP Ohio or partially in the name of AEP Ohio or held for the benefit of AEP 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 AEP Ohio (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The Energy Supplier agrees to take such action as reasonably required to create and perfect AEP Ohio's first priority security interest in, and lien on (and right of setoff against), such 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 Energy Supplier is the Defaulting Party or an Early Termination Date (whether or not such Energy Supplier was the Defaulting Party), AEP Ohio may do any one or more of the following in any order: (i) exercise any of the rights and remedies of AEP Ohio, including the right to set-off and liquidation, against any and all ICR Collateral, Margin Collateral or other collateral of such Energy Supplier in the possession of AEP Ohio, whether held in connection with this

Agreement or any Other Energy 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 Energy Supplier; and (ii) draw on any outstanding Letter of Credit provided by such Energy Supplier. AEP Ohio will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such Energy Supplier's obligations under this Agreement and under any Other Energy Supplier Agreement, and such Energy Supplier shall remain liable for any amounts owing to AEP Ohio after such application, subject to AEP Ohio's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All notices, demands or requests regarding 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 Energy 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 AEP 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 AEP Ohio receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the Energy 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 AEP Ohio thirty (30) days before the cancellation date of the original Letter of Credit. If the Energy Supplier fails to supply a substitute Letter of Credit as required, then AEP Ohio will have the right to draw on the existing Letter of Credit and to hold the amount as 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 Energy Supplier has obtained a Letter of Credit fails to meet the foregoing conditions, the Energy Supplier will immediately notify AEP 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 AEP Ohio. For avoidance of doubt, Energy 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, AEP 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 Energy Supplier hereunder or its Guarantor under the Guaranty to AEP Ohio or any of them.

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

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

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

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

AEP Ohio will pay simple interest calculated at the lower of the Margin Interest Rate or 6% per annum on all cash held by AEP Ohio pursuant to this Agreement. If applicable, each Billing Period the Energy Supplier will prepare a statement of interest amounts due from AEP Ohio. The statement will be sent to AEP Ohio within three (3) Business Days after the end of

the Billing Period via overnight mail or other expeditious means. AEP 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 Energy Supplier**

AEP Ohio's determination of an Energy 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 Energy Supplier. AEP Ohio will treat all Energy Suppliers in a non-discriminatory manner and shall provide no preference to any Energy Supplier.

**ARTICLE 6**

**BILLING, PAYMENT AND NETTING**

**6.1 Invoice Statement**

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

(a) For each Billing Period, AEP Ohio will prepare and provide an invoice to each Energy Supplier, which will show (i) amounts due to the Energy Supplier equal to the Price multiplied by the applicable Seasonal Billing Factor multiplied by the Estimated Monthly Energy Share, (ii) the Hourly Energy Share Adjustment from any prior Billing Period that have not been invoiced, if any, and (iii) all Charges due to AEP Ohio incurred during the Billing Period (the "Billing Statement").

(b) AEP 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 AEP Ohio, AEP Ohio will specify in each Billing Statement how the amounts will be allocated among the Energy Suppliers. In the case of the Hourly Energy Share Adjustment, the allocation will be based on the respective Energy Loads of AEP Ohio.

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

(d) AEP Ohio or the Energy 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 AEP Ohio and the Energy 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 Energy Suppliers of amounts due and owing to AEP Ohio, as set forth in a Billing Statement, will be final and binding, absent manifest error.

**6.2 Third Party Billing**

AEP Ohio shall have no responsibility for billing between an Energy Supplier and any other third party. AEP Ohio shall be solely responsible for billing SSO Customers for Energy 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 Energy Supplier, the failure of the Defaulting Party to provide Margin Collateral, or with respect to AEP 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(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 AEP Ohio responsible for the provision of Energy Supply to meet the Defaulting Party's Energy Supplier Responsibility Share under this Agreement;

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

The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if an Energy Supplier is the Defaulting Party and the Termination Payment is due to such Energy Supplier, AEP 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 Energy Supplier as Default Damages; and further provided that any previously attached security interest of AEP Ohio in such retained amounts will continue. If the Termination Payment has been retained by AEP Ohio as security for additional amounts that may be determined to be due and owing by the Energy 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 Energy Supplier, AEP Ohio will pay interest at the Interest Rate on the Termination Payment amount being made to the Energy 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 [Intentionally Omitted]**

#### **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 Energy 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 Energy Supply Agreement that are unsecured and not subject to any Guaranty; (ii) second, to satisfy any payment obligations under any Other Energy 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 Energy 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 AEP Ohio's Representations and Warranties

AEP Ohio hereby represents and warrants to the Energy 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 necessary for it to 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 Energy Supplier's Representations and Warranties**

Each Energy Supplier hereby represents and warrants to AEP 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 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 AEP 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; and (iii) is qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements; and (iv) has duly obtained all FERC authorization necessary or desirable to make sales of Energy 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 Energy Supply shall pass from each Energy Supplier to AEP Ohio when the Energy Supply is delivered to the Delivery Point. As between the Parties, each Energy Supplier shall be deemed to be in exclusive control and possession of the Energy Supply prior to and at the Delivery Point, and AEP Ohio shall be deemed to be in

exclusive control and possession of the Energy Supply from the Delivery Point. Each Energy Supplier warrants that it will deliver the Energy Supply to AEP 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 AEP OHIO AND EACH ENERGY 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 ENERGY SUPPLIER TO ANY OTHER ENERGY SUPPLIER, EXCEPT AS PROVIDED IN ARTICLE 10.

**ARTICLE 10**

**INDEMNIFICATION**

**10.1 Indemnification**

(a) Each Energy Supplier shall defend, save harmless and indemnify AEP Ohio and its Affiliates, shareholders, managers, directors, officers, employees and agents (collectively, the "AEP Ohio Indemnified Party") against and from any and all of the following incurred by the AEP Ohio Indemnified Party solely as a result of a third party claim (including PJM and each other Energy Supplier) against the AEP 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 Energy 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 Energy Suppliers or for which the Energy 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 AEP Ohio. AEP Ohio may, at its own expense, retain counsel and participate in the defense of any such suit or action.

(b) AEP Ohio and each Energy Supplier shall defend, save harmless and indemnify each other Energy 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 Energy 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 AEP Ohio or such Energy 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 AEP Ohio or such Energy Supplier or for which the Energy 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 Binding Arbitration**

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) AEP Ohio may not assign this Agreement or its rights or obligation hereunder without the prior written consent of the applicable Energy Suppliers, which consent may not be unreasonably withheld, conditioned or delayed; provided, however, AEP Ohio may, without the consent of the Energy 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 AEP Ohio. Under (a)(ii) and (a)(iii) above, AEP 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 Energy Supplier may not assign this Agreement or any rights or obligation hereunder without the prior written consent of AEP Ohio, which consent may not be

unreasonably withheld, conditioned or delayed; provided, however, an Energy Supplier may, without the consent of AEP 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 Energy Supplier. Under (b)(ii) and (b)(iii) above, the assigning Energy 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 AEP Ohio:

**NOTICES & CORRESPONDENCE:**

AEP Ohio  
1 Riverside Plaza  
Columbus, OH 43220  
Attn: Contract Administration Manager

Contract Administration Manager Contact:  
Email:  
Phone:  
Fax:

**PAYMENTS:**

Institution:  
Account No.:  
ABA No:

**INVOICES:**

Attention:  
Email:  
Fax Number:  
Phone Number:

**SCHEDULING:**

Attention:  
Email:  
Fax Number:  
Phone Number:

**CREDIT:**

Attention:  
Mail Code:  
Email:  
Fax Number:  
Phone Number:

**To Energy Supplier:**

Each Energy 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 Section 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), AEP Ohio will attempt to notify the Energy Supplier in advance of such disclosure. However, neither AEP Ohio nor its employees, lenders, counsel, accountants, advisors or agents, will not be responsible to the Energy Suppliers for any such disclosure and AEP 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 Energy Suppliers, if AEP 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 Energy Supply by an Energy Supplier under this Agreement (collectively, the "Taxes") will be the liability of the Energy 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"), if any, which will be AEP Ohio's responsibility. AEP Ohio shall provide the Energy Supplier with a valid Ohio Sales and Use Tax resale exemption certificate or direct pay permit, and an Energy Supplier shall not collect any Ohio Sales and Use Taxes from AEP Ohio nor remit any Ohio Sales and Use Taxes directly to the applicable taxing authority. AEP Ohio will defend and indemnify the Energy Supplier for any Ohio Sales and Use Taxes that the Energy Supplier may be required to remit directly to the applicable taxing

authority and will pay to the Energy Supplier all such tax amounts upon demand. Each Energy 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. Should AEP Ohio be required to remit any Taxes directly to any applicable taxing authority (other than Ohio Sales and Use Taxes), the Energy Supplier will defend and indemnify AEP Ohio and will pay AEP Ohio all such Tax amounts upon demand.

Each Party shall provide to the other Party all information, data and exemption certificates as such other Party may from time to time reasonably request and otherwise fully cooperate with such other Party in connection with the reporting of (i) any Taxes payable by an Energy 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 Energy Supplier will have the right, upon reasonable notice, to inspect (at the sole cost and expense of such Energy Supplier) the books and records retained by AEP Ohio only insofar as they relate to payments due and owing, or owed and paid, to such Energy Supplier. Such inspection must take place during regular business hours. AEP Ohio will have the right, upon reasonable notice, to inspect (at the sole cost and expense of AEP Ohio) the books and records retained by such Energy Supplier only insofar as they relate to Energy delivered by such Energy 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 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.

OHIO POWER COMPANY

By \_\_\_\_\_

Name: Pablo A. Vegas

Title: President, AEP Ohio

[ENERGY SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

[ENERGY SUPPLIER]

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

Name:

Title

## ATTACHMENTS

- A Energy Supplier Responsibility Share
- B Seasonal Billing Factor
- C Credit Examples
- D Form of Guaranty
- E Form of Energy Supplier Letter of Credit
- F [Intentionally Omitted]

ATTACHMENT A

ENERGY SUPPLIER RESPONSIBILITY SHARE

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

Original Delivery Period: \_\_\_\_\_, 2013 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:

2. Article 5 Notices:

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

[ENERGY SUPPLIER]

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

ATTACHMENT B  
SEASONAL BILLING FACTOR

The Seasonal Billing Factors are as follows:

June 1 through September 30 \_\_\_\_\_

October 1 through December 31 and  
January 1 through May 31 \_\_\_\_\_

ATTACHMENT C-1

INDEPENDENT CREDIT REQUIREMENT PER TRANCHE

<b>Month</b>	<b>23-Month Procurement (\$/tranche)</b>
Inception through July 2013	900,000
August 2013	900,000
September 2013	900,000
October 2013	900,000
November 2013	800,000
December 2013	800,000
January 2014	800,000
February 2014	800,000
March 2014	600,000
April 2014	600,000
May 2014	600,000
June 2014	600,000
July 2014	500,000
August 2014	500,000
September 2014	500,000
October 2014	500,000
November 2014	300,000
December 2014	300,000
January 2015	300,000
February 2015	300,000
March 2015	200,000
April 2015	200,000
May 2015	200,000



## ATTACHMENT C-2

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

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

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

1. The expected On-Peak Energy Load per Tranche;
2. The expected Off-Peak Energy 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 Energy Load for each month will be calculated by multiplying (i) the number of customers then being provided generation service by AEP 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 AEP Ohio over a recent three-year period (“Historical Actual Usage”). The Energy Load will be calculated separately for each major rate class and then summed to determine the total Energy Load. The total Energy 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

Energy Load per Tranche (On-Peak and Off-Peak) will be equal to 1% of the total Energy 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 AEP Ohio with reference to available market price data. Notwithstanding the foregoing, if AEP Ohio is unable to obtain publicly available market price data for Forward Market Prices, Forward Market Prices will be determined by AEP Ohio using any method which AEP 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 AEP 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 slice-of-system product 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 Master Energy Supply 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 24-month Original Delivery Period from June 2013 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, AEP 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 24-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 Energy Load per Tranche reflecting the then current number of Un-Switched Customers and Historical Actual Usage and calculating the ratio of the current Energy Load per Tranche to the initial Energy 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 Energy 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>		Mkt Value
	Adjusted On-Peak Market Price	Adjusted Off-Peak Market Price	On- Peak	Off- Peak	
	\$/MWh	\$/MWh	MWh	MWh	\$000
Jun-13	37.94	26.82	3,386	3,653	226
Jul-13	42.61	27.44	4,078	3,844	279
Aug-13	42.27	28.75	3,986	3,595	272
Sep-13	34.06	24.16	2,900	2,578	161
Oct-13	31.54	24.66	2,367	2,452	135
Nov-13	33.55	24.39	2,799	2,288	150
Dec-13	36.55	29.93	3,480	3,259	225
Jan-14	40.23	34.88	2,749	3,247	224
Feb-14	41.00	34.63	3,133	2,776	225
Mar-14	37.96	30.36	3,095	2,841	204
Apr-14	38.22	27.93	2,440	2,554	165
May-14	37.55	28.33	2,905	2,705	186
Jun-14	42.84	30.55	3,386	3,653	257
Jul-14	48.17	30.97	4,078	3,844	315
Aug-14	48.95	23.45	3,986	3,595	279
Sep-14	39.14	27.46	2,900	2,578	184
Oct-14	35.27	27.60	2,367	2,452	151
Nov-14	37.07	27.23	2,799	2,288	166
Dec-14	38.82	32.97	3,480	3,259	243
Jan-15	43.74	37.11	3,749	3,247	284
Feb-15	44.58	36.85	3,133	2,776	242
Mar-15	41.23	32.43	3,095	2,841	220
Apr-15	40.56	29.85	2,440	2,554	175
May-15	40.59	31.00	2,905	2,705	202

(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 Customer as described in Attachment C-2.

Table 2

Adjusted Market Price at Solicitation Close Date  
[ VALUES ARE FOR ILLUSTRATION ONLY]

	<u>Forward Price (a)</u>		<u>Price Adjustment Factor (b)</u>		Adjusted On-Peak Market Price	Adjusted Off-Peak Market Price
	On-Peak Market Price	Off-Peak Market Price	On- Peak	Off- Peak		
	\$/MWh	\$/MWh			\$/MWh	\$/MWh
Jun-13	36.00	24.40	1.054	1.097	37.94	26.82
Jul-13	41.80	26.80	1.019	1.024	42.61	27.44
Aug-13	40.80	26.80	1.037	1.073	42.27	28.75
Sep-13	33.90	24.10	1.006	1.002	34.06	24.16
Oct-13	32.10	23.90	0.983	1.032	31.54	24.66
Nov-13	33.40	24.90	1.004	0.980	33.55	24.39
Dec-13	36.30	29.50	1.008	1.015	36.55	29.93
Jan-14	40.10	33.50	1.002	1.041	40.23	34.88
Feb-14	40.20	33.50	1.021	1.034	41.00	34.63
Mar-14	37.70	30.10	1.006	1.009	37.96	30.36
Apr-14	37.60	28.40	1.017	0.982	38.22	27.93
May-14	37.60	27.10	0.999	1.046	37.55	28.33
Jun-14	40.60	27.80	1.054	1.097	42.84	30.55
Jul-14	47.30	30.20	1.019	1.024	48.17	30.97
Aug-14	47.20	21.90	1.036	1.073	48.95	23.45
Sep-14	38.90	27.40	1.006	1.002	39.14	27.46
Oct-14	35.90	26.70	0.983	1.032	35.27	27.60
Nov-14	36.90	27.80	1.004	0.980	37.07	27.23
Dec-14	38.50	32.50	1.008	1.015	38.82	32.97
Jan-15	43.70	35.60	1.002	1.041	43.74	37.11
Feb-15	43.70	35.60	1.021	1.034	44.58	36.85
Mar-15	41.00	32.10	1.006	1.009	41.23	32.43
Apr-15	39.90	30.40	1.017	0.982	40.56	29.85
May-15	40.60	29.60	0.999	1.046	40.59	31.00

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

(b) Price Adjustment Factors as determined by AEP 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 Price (a)</u>		<u>Initial Tranche</u>		<u>Current Mkt</u>	<u>Original Mkt Value on Solicitation Closing Date</u>	<u>Change in Mkt Value</u>	<u>Volume Adjustment Factor</u>	<u>Volume Adjustment Change in Mkt Value</u>
	<u>On-Peak Market Price</u>	<u>Off-Peak Market Price</u>	<u>On-Peak</u>	<u>Off-Peak</u>					
	<u>\$/MWh</u>	<u>\$/MWh</u>	<u>MWh</u>	<u>MWh</u>	<u>\$000</u>	<u>\$000</u>	<u>\$000</u>		<u>\$000</u>
Jun-13	39.60	26.90	3,386	3,653	232	226	6	1.0005	6
Jul-13	45.98	29.48	4,078	3,844	301	279	22	0.9984	22
Aug-13	44.88	29.48	3,986	3,595	285	272	13	0.9991	13
Sep-13	37.24	26.51	2,900	2,578	176	161	15	1.0041	15
Oct-13	35.31	26.29	2,367	2,452	148	135	13	1.0037	13
Nov-13	36.74	27.39	2,799	2,288	166	150	16	0.9993	16
Dec-13	39.88	32.45	3,480	3,259	245	225	20	0.9963	20
Jan-14	49.90	45.44	2,749	3,247	285	264	21	0.9941	21
Feb-14	44.17	36.85	3,133	2,776	241	225	16	0.9957	16
Mar-14	41.53	33.11	3,095	2,841	223	204	19	1.0030	19
Apr-14	41.36	31.30	2,440	2,554	181	165	16	1.0068	16
May-14	41.36	29.81	2,905	2,705	201	186	15	1.0052	15
Jun-14	44.72	30.64	3,386	3,653	263	257	6	1.0005	7
Jul-14	51.98	33.28	4,078	3,844	340	315	25	0.9984	24
Aug-14	51.98	33.28	3,986	3,595	327	312	15	0.9991	15
Sep-14	42.79	30.14	2,900	2,578	202	184	18	1.0041	18
Oct-14	39.49	29.43	2,367	2,452	166	151	15	1.0037	15
Nov-14	40.59	30.58	2,799	2,288	184	166	18	0.9993	18
Dec-14	42.35	35.75	3,480	3,259	264	243	21	0.9963	21
Jan-15	48.02	39.22	3,749	3,247	307	284	23	0.9941	23
Feb-15	48.02	39.22	3,133	2,776	259	242	17	0.9957	17
Mar-15	45.10	35.37	3,095	2,841	240	220	20	1.0030	20
Apr-15	43.89	33.44	2,440	2,554	192	175	17	1.0068	17
May-15	44.72	32.62	2,905	2,705	218	202	16	1.0052	16
								<b>Total Mark to Market Exposure per Tranche(before discounting)(c)</b>	<b>271</b>

(a): Adjusted On-Peak and Off-Peak Forward Market Prices determined as described in Attachments 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 Ohio Power Company, an Ohio corporation ("AEP Ohio"). Capitalized terms used herein but not defined herein shall have the meaning given such terms in the Agreement (as defined below).

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

NOW, THEREFORE, in consideration of, and as an inducement for, AEP Ohio entering into the Agreement, the Guarantor hereby covenants and agrees as follows:

1. **Guaranty.** The Guarantor hereby unconditionally and absolutely guarantees to AEP Ohio the prompt payment when due, subject to any applicable grace period and upon demand in writing from AEP Ohio, of any and all amounts payable by the Energy Supplier to AEP Ohio arising out of the Agreement in connection with Suppliers [ICR / Total Exposure Amount] (the "Obligations"). Notwithstanding the aggregate amount of the Obligations at any time or from time to time payable by the Energy Supplier to AEP Ohio, the liability of the Guarantor to AEP 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 Energy Supplier under the Agreement; the absence of any action to enforce the Agreement; any waiver or consent by AEP Ohio concerning any provisions of the Agreement; the rendering of any judgment against the Energy Supplier or any action to enforce the same; any failure by AEP 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 AEP Ohio; or any failure by AEP 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 AEP Ohio upon the insolvency, bankruptcy or reorganization of the Energy Supplier or otherwise, all as though such payment had not been made.

3. **Waivers.** Guarantor's obligation hereunder with respect to the Obligations shall not be affected by the existence, validity, enforceability, perfection or extent of any collateral for such Obligations covered hereunder, or by any extension, or the acceptance of any sum or sums on account of Energy Supplier, or of any note or draft of Energy Supplier and/or any third party, or security from Energy Supplier. AEP Ohio shall not be obligated to file any claim relating to the Obligations owing to it in the event that Energy Supplier becomes subject to bankruptcy, insolvency, reorganization, liquidation, dissolution, or similar proceedings affecting Energy Supplier (whether voluntary or involuntary), and the failure of AEP Ohio to so file shall not affect Guarantor's obligations hereunder.

4. **Effect of Amendments.** Guarantor agrees that AEP Ohio and Energy Supplier may modify or amend any or all of the Agreement and that AEP Ohio may, according to the Agreement, delay or extend the date on which any performance must be made under the Agreement, or release Energy 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 AEP 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 AEP Ohio, which termination shall be effective only upon receipt by AEP Ohio of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to AEP 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 AEP 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 AEP 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 Energy 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 Energy 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 AEP Ohio against the Energy Supplier, and AEP 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 AEP Ohio's counsel) in any way relating to the enforcement or protection of the rights of AEP Ohio hereunder; provided that the Guarantor shall not be liable for any expenses of AEP 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 AEP Ohio and its permitted successors and assigns and shall apply to all successors and assigns of the Energy Supplier. The Guarantor may not assign this Guaranty nor delegate its duties or rights hereunder without the prior express written consent of AEP Ohio. AEP 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 writing and signed by the parties hereto; provided, however, the Guarantor may increase the aggregate amount of the obligations in this Guaranty without a countersignature

14. **Choice of Law and Venue.** The Guarantor and AEP 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 AEP 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 AEP Ohio with respect to the guarantee of amounts payable by the Energy Supplier to AEP Ohio arising out of the Agreement in connection with Supplier's [ICR / 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 ENERGY SUPPLIER Letter of Credit

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

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

To: Ohio Power Company (“Beneficiary”)  
1 Riverside Plaza  
Columbus, Ohio 43220  
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 Energy 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 Energy 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

<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.

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 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 Energy Supply Agreement” shall mean that certain Master Energy Supply Agreement between the Applicant and the Beneficiary, dated \_\_\_\_\_.

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits – 2007 Revision, ICC Publication No. 600, or any successor publication thereto (the “UCP”). Any and all banking charges, transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.

11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy the minimum long-term senior unsecured debt rating of “A-” from Standard & Poor’s Rating Services or “A3” from Moody’s Investors Service, Inc.

12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder. Drafts showing amounts in excess of amounts available under this Letter of Credit are acceptable, however, in no event will payment exceed the amount available to be drawn under this Letter of Credit.

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

14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this Letter of Credit to be closed for business on the last day of presentation, the expiration date of this Letter of Credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

15. This original Letter of Credit has been sent to the Beneficiary located at \_\_\_\_\_ (as per Applicant’s instructions). Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the Beneficiary.

Very truly yours,

(Bank)

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

Name:

Title:

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

Name:

Title:

**Annex 1 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

The undersigned is making a drawing under the above-referenced Letter of Credit in the amount specified below and hereby certifies to you as follows:

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.

2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$ \_\_\_\_\_, inasmuch as (choose one of the following by placing an "X" on the line preceding the statement):

\_\_\_\_\_ (a) An Event of Default has occurred with respect to the Applicant under the Master Energy 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 Energy Supply Agreement.

3. The amount to be received by Ohio Power Company 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,

Ohio Power Company

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

Name:

Title:

Date:

**Annex 2 to Letter of Credit**

DRAWING UNDER LETTER OF CREDIT NO. \_\_\_\_\_

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

ON [Business Day set forth in Paragraph 5]

PAY TO: Ohio Power Company

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

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

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

(Bank)  
(Address)

Ohio Power Company

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

Name:

Title:

Date:



**Annex 3 to Letter of Credit**

AVAILABILITY CERTIFICATE  
UNDER LETTER OF CREDIT NO. \_\_\_\_\_

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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,

Ohio Power Company

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.

Ohio Power Company

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

Name:

Title:

Date:

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

**Annex 5 to Letter of Credit**

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

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

To: Ohio Power Company

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:

Ohio Power 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 Beneficiary to draw under the above Letter of Credit in its entirety.

By this transfer, all rights of the undersigned Beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall have the sole rights as beneficiary thereof, including sole rights relating to any amendments, whether increases, extensions or other amendments and whether now existing or hereafter made. All amendments are to be advised direct to the transferee without necessity of any consent of or notice to the undersigned beneficiary.

The advice of such Letter of Credit is returned herewith, and we ask you to endorse the transfer on the reverse thereof, and forward it directly to the transferee with your customary notice of transfer.

Very truly yours,

Ohio Power Company

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

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

# **EXHIBIT D**

**Communications Protocols for  
Ohio Power Company (“AEP Ohio”)  
Competitive Bidding Process Auctions**

**December 21, 2012**

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# 1. INTRODUCTION

These Communications Protocols apply to the competitive bidding process (“CBP”) auctions for Ohio Power Company (“AEP Ohio”) to procure supply for the hourly energy requirements of its retail customers that take retail generation service from AEP Ohio (“SSO customers”).

The Communications Protocols in this document are intended to promote a fair, open, transparent, objective, and non-discriminatory process for the auctions under the CBP to procure slice-of-system, energy-only products for SSO customers. These protocols also intend to protect proprietary information of participants and information that, should it be released, would be detrimental to the outcome of the auction or future competitive bidding processes.

Terms that are not defined herein are either defined in the CBP Rules or in the Master Energy Supply Agreement.

These protocols elaborate upon the means by which confidentiality is to be maintained through adherence to the procedures in this document. Should the Auction Manager recognize that additional procedures are required, the Auction Manager will establish such additional procedures in keeping with the principles provided in this document and inform AEP Ohio, the Public Utilities Commission of Ohio (“Commission”) and Commission Staff, the Commission Consultant, and bidders in a timely manner.

This document is organized as follows:

- Section 2 summarizes the objectives of this document and provides general procedures.
- Section 3 describes protocols regarding communications between AEP Ohio and bidders, including any affiliates of AEP Ohio.
- Section 4 summarizes information that may be communicated with the general public, including the media, and the means by which that information is disseminated.
- Section 5 addresses bidder Communications Protocols, including communications among bidders and between the Auction Manager and bidders.
- Section 6 summarizes Communications Protocols with the Commission, including communications between the Commission and the Auction Manager, between the Commission and AEP Ohio and disclosure of confidential information.
- Appendix A is an acknowledgment confidentiality agreement to be signed by any party other than bidders who may have access to confidential information about the auction process.

## **2. GENERAL OBJECTIVES AND PROCEDURES**

### **2.1 Objectives**

This document and the procedures it describes promote four main objectives:

- The first objective is to establish a fair and equitable process for all bidders by ensuring all bidders have equal access to the same information necessary to evaluate the bidding opportunity and to prepare their bids in a timely manner.
- The second objective is to take all reasonable precautions that any information generated by the auction process that could harm the competitive position of bidders or AEP Ohio, if released, is kept confidential.
- The third objective is to take all reasonable precautions that confidential information is provided only to those persons to whom it is deemed necessary for the conduct and management of the auction process.
- The fourth objective is to ensure that information that, if released, could harm the competitiveness of future competitive bidding processes, is kept confidential from all entities, including bidders.

These objectives will be accomplished by following two guiding principles. The first is that there will be one communication point for bidders: all communications to prospective and actual bidders will be through the Auction Manager. The second guiding principle is that the Auction Manager will distribute and disseminate information equally and fairly to all potential and actual bidders. These two guiding principles facilitate equal access to the same information for all bidders. Only the Auction Manager responds to inquiries from bidders and information is disseminated to all bidders by or under the supervision of the Auction Manager.

The Auction Manager will also put in place procedures to protect information generated by the implementation of the auction that could harm the competitive position of bidders if released.

## 2.2 Public and Confidential Information

These protocols specifically identify public information. Any information that is not specifically identified as public information is non-public, or “confidential” information. These Communication Protocols provide the procedures for the treatment and communication of confidential information for AEP Ohio, the Auction Manager, the Commission, and the Commission Consultant. Bidders also have obligations to keep from disclosing certain information. While these are discussed briefly in these protocols, the bidders’ obligations are provided in detail in the CBP Rules. Bidders accept and acknowledge their obligations in the Part 1 Application and the Part 2 Application.

**Public Information** is defined as any information to which all parties concerned with the auction process (i.e., potential and actual bidders, AEP Ohio, Commission, Commission Consultant, the public, and the media) can have access. Public information includes:

- FAQs;
- CBP Rules;
- Announcements;
- AEP Ohio’s filings and all other documents for participation in the auctions;
- Any documents prepared by the Auction Manager that summarize AEP Ohio’s filing or Commission Order;
- Calendar;
- Master Energy Supply Agreement;
- Standard form of the credit documents and acceptable modifications to the standard forms;
- Application Forms (blank);
- Contents of the Data Room;
- Information provided at bidder information sessions;
- Comments submitted during the stakeholder process;
- Tranche target, minimum and maximum starting prices, load caps, credit-based tranche caps;
- Seasonal Billing Factors;

- Any information that the Commission has publicly released or that the Commission requests be released by the Auction Manager or by the Commission Consultant; and
- Any information that a bidder makes public, consistent with the CBP Rules and the bidder's undertakings under the Part 1 and Part 2 Application process, regarding its own participation in the auction.

Items that are not on this list and items that are not specifically identified in the CBP Rules or in these Communications Protocols as confidential are to be considered confidential unless the Auction Manager determines that the information may be made public without impairing the integrity of current or future competitive bidding processes, without impairing the ability of AEP Ohio to hold future competitive bidding processes, and without harming consumers or bidders. Public information is posted to the CBP website, the PJM website, AEP Ohio's websites, or the Commission website.

Parties to these protocols may discuss this public information with others and/or refer others to the CBP website. However, any question from potential bidders, even if the question concerns public information, must be referred to the Auction Manager in keeping with the guiding principle that the Auction Manager serves as the single point of contact for bidders.

The treatment and restrictions on the communication of confidential information is discussed in the remainder of these protocols. Examples of confidential information include:

- The identity of a party asking question regarding the auctions;
- All information provided on bidder applications;
- Aggregate and individual bidder eligibility;
- Starting price;
- Round results and bids by round, as well as any other auction results derived therefrom;
- The status of the auction;
- The status of participation of any bidder; and
- Information provided by bidders to the Auction Manager exclusive of such information available from publicly available documents.

### **2.3 Access to Confidential Information**

Under these protocols, an individual who is involved with the conduct and management of the auction process and who will have access to confidential information:

- is provided with a copy of these protocols;
- signs the acknowledgment and confidentiality agreement (“Acknowledgment”) attached to these protocols; and
- returns the signed Acknowledgment to the Auction Manager.

A signatory of the Acknowledgment may only discuss confidential information under these Communications Protocols with another signatory of the Acknowledgment. The Auction Manager Team maintains the list of signatories of the Acknowledgment. The Auction Manager provides the list of signatories to each of the signatories on a weekly basis until the minimum and maximum starting prices are announced. Thereafter, the Auction Manager provides the list of signatories to each of the signatories if the list changes.

### **3. AEP OHIO AND AFFILIATES**

#### **3.1 Internal Communications**

AEP Ohio will designate individuals who are involved with the conduct and management of the auction process and who will have access to confidential information. These individuals will receive the Communications Protocols and sign the Acknowledgment. These individuals, directly or indirectly, will not have communication with, or exchange information with, individuals who may be involved with applying to or bidding in the auction process where such communication or information is related directly or indirectly to this auction process. In these protocols, "AEP Ohio" means the group of individuals designated by AEP Ohio as those involved with the conduct and management of the auction process and who will have access to confidential information.

#### **3.2 Communications with bidders**

AEP Ohio will not communicate with bidders prior to acceptance of the results by the Commission. When the Auction Manager informs AEP Ohio about the price and tranches of the winning bids and the identity of winning bidders, representatives from AEP Ohio then will communicate with the winning bidders in order to execute the necessary documents.

If a bidder attempts to contact AEP Ohio prior to acceptance of the results by the Commission regarding the auction process by phone call, email, fax, or other means, AEP Ohio will direct the bidder to the CBP website and/or to the Auction Manager.

#### **3.3 Part 1 Application Process**

For the Part 1 Application process, the Auction Manager will provide the names of applicants to AEP Ohio as well as the names of the entities on whose financial standing the applicants rely. The Auction Manager will also provide financial and credit information provided in the Part 1 Application. AEP Ohio's credit department will confirm the applicants' unsecured credit line under the Master Energy Supply Agreement and confirm the applicants' credit requirements in the Part 2 Application process. The Auction Manager will provide to AEP Ohio the list of Qualified Bidders.

#### **3.4 Part 2 Application Process**

For the Part 2 Application process, the Auction Manager will provide to AEP Ohio the names of

the Qualified Bidders that chose to submit a Part 2 Application as well as aggregate and anonymous information regarding the indicative offers. The Auction Manager will provide to AEP Ohio's credit department a copy of the credit instruments and documentation submitted in the Part 2 Application with the amount and the identity of the bidder redacted. The Auction Manager will provide to AEP Ohio the list of Registered Bidders and the aggregate initial eligibility in the auction.

### **3.5 Auction and Post Auction**

The Auction Manager will provide to AEP Ohio access to the following information during the auction:

- Going prices and range of excess supply in each round;
- Extraordinary events during the auction;
- The round in progress at any point in time;
- Messages from the Auction Manager; and
- The auction clearing price.

This information is also seen by all bidders in the auction. In addition, the Auction Manager communicates with AEP Ohio when its assistance is needed in responding to critical bidder questions or when there are problems with the auction.

Any paper copies of the bidding results will be secured in the Auction Manager's office.

AEP Ohio will receive the Commission Consultant's report, if one is produced, redacted only for confidential information to which AEP Ohio does not otherwise have access, so that AEP Ohio may provide comments to ensure accuracy.

Upon acceptance of the results by the Commission, the Auction Manager will notify AEP Ohio of the identity of the winning bidders and the number of tranches won by each winning bidder. The Auction Manager will confirm the auction clearing price and provide contact information for the winning bidders so as to enable AEP Ohio to contact the winning bidders to execute necessary documents.

## **4. GENERAL PUBLIC AND MEDIA**

While bidding is in progress, there shall be no communication with the media or the public other than notification when the bidding begins. After the auction is completed, results are accepted by the Commission, and bidders have been notified, all media inquiries will be forwarded to AEP Ohio.

### **4.1 The CBP Website**

The central source of information made available publicly and to bidders is the CBP website. The Auction Manager will manage the information flow on the CBP website and will be designated on the CBP website as the point of contact for any questions or inquiries from parties. Any party will have access to the public sections of the CBP website. The CBP website also may have a restricted, non-public section that will be accessible only to Registered Bidders.

### **4.2 Subscribers**

If a party wishes to receive notices and updates regarding public information and new postings to the CBP website, then the party can register through the CBP website to become a Subscriber.

The Auction Manager will send any announcements regarding the auction process to Subscribers. The method of such communication will be via email using the bcc email field so identification of Subscribers is not disclosed to other Subscribers. Further, the announcements will be posted to the CBP website.

### **4.3 Media**

AEP Ohio and/or the Auction Manager may issue one or more notices or may place ads in the trade press with the intent to disseminate information about the auction in an efficient, fair, and timely manner. Such notices or ads would be for the purpose of outreach to suppliers that may become potential bidders in the CBP.

Inquiries from the media to the Auction Manager will be directed to AEP Ohio. AEP Ohio may grant interviews to the press or respond to press inquiries. The interviews and responses to press inquiries are limited to public information regarding the auctions. AEP Ohio may require that the Auction Manager, who is to provide support in promotion efforts, participate in interviews and press inquiries. AEP Ohio has complete discretion to provide their customers and security analysts with public information regarding the auctions.



#### **4.4 General Public**

**Inquiries from the general public to the Auction Manager will be directed to the CBP website.**

**Direct questions from parties not directly participating in the auction process, such as the general public, customers, utilities in other jurisdiction, etc. will be answered by the Auction Manager on a best-effort basis. Questions from potential bidders will always be answered first. The Auction Manager has the discretion not to publish a question and answer on the FAQ section of the CBP website if the Auction Manager determines that the question does not provide material information and is not of interest to bidders.**

## **5. BIDDERS**

### **5.1 Communications Among Bidders**

Under the CBP Rules, bidders are prohibited from communicating with each other in ways that would compromise the integrity and competitiveness of the auction. Sanctions will be applied if these rules are violated.

### **5.2 Communications between the Auction Manager and Bidders**

The central source of information for bidders is the CBP website. The website will facilitate making information available equally to bidders in a timely manner.

Bidders will automatically be considered Subscribers and receive ongoing information about the auction process. As discussed above, once registered through the CBP website, Subscribers will receive notifications from the Auction Manager providing updates to the auction process and to the CBP website.

If the Auction Manager receives an inquiry from a bidder, the Auction Manager will respond to the bidder via email. The Auction Manager will post the question and answer on the CBP website without revealing the identity of the questioner, ensuring that the information will be made available equally to all bidders in a timely manner. The Auction Manager has the discretion not to publish a question and answer on the FAQ section of the CBP website if the Auction Manager determines that the question does not provide material information or is not of interest to bidders.

In addition to posting information to the CBP website, the Auction Manager may contact bidders directly in order to seek or provide information about the auction in a way that does not advantage any bidder.

### **5.3 Frequently Asked Questions**

Among other information and resources on the CBP website, there will be an “FAQ” (frequently asked questions) section with posted questions and answers. As responses are provided to inquiries, they will be converted into an FAQ and posted to the CBP website without revealing the identity of the party posing the inquiry. Questions and responses from bidder information session will also be posted to the FAQ section of the CBP website.

When an inquiry is received, the Auction Manager drafts a response whenever possible. The Auction Manager forwards the inquiry and draft response to AEP Ohio, without revealing the identity of the questioner. The Auction Manager and AEP Ohio will agree on procedures to endeavor to provide a response to bidder inquiries within two (2) business days of receipt of the inquiry by the Auction Manager.

#### **5.4 Auction**

During the auction, the Auction Manager, the Commission, the Commission Consultant may monitor the bidding onsite at the Auction Manager's office.

The Auction Manager will ensure the bids submitted by bidders conform to the rules of the auction.

The CBP Rules will be applied to determine which bids, if any, are winning bids.

#### **5.5 Limitations on Disclosures by Bidders**

As specified in the CBP Rules, bidders shall not disclose that they are participating in the auction process and winning bidders shall not disclose that they have won any tranches in an auction until the Commission publicly reports the results of the auction. Such limitation on public disclosure by bidders is waived if disclosure is required by law.

## **6. PUBLIC UTILITIES COMMISSION OF OHIO**

### **6.1 Commission Staff and Commission Consultant**

The Commission may identify individuals from Commission Staff and from the Commission Consultant who will be onsite at the offices of the Auction Manager during the auction or who generally will oversee the conduct and management of the auction process. These individuals will have access to confidential information. These individuals will receive the Communications Protocols and sign the Acknowledgment.

### **6.2 Communications with the Auction Manager**

During the auction, the identity of bidders, prices, and the number of tranches bid by each bidder will be kept confidential. This information will be released on a round-by-round basis to the individuals from the Commission Staff and Commission Consultant present at the Auction Manager's office.

### **6.3 Communications with AEP Ohio**

The Commission may communicate with AEP Ohio regarding the auction process.

### **6.4 Communications with bidders**

The Commission and the Commission Consultant will not communicate with bidders about the auction process prior to the close of the auction. If a bidder attempts to contact the Commission or the Commission Consultant by phone, email, fax, or other means, the Commission or the Commission Consultant will direct the bidder to the CBP website and/or to the Auction Manager.

### **6.5 Information on Auction Participation**

The Auction Manager will provide to the Commission and the Commission Consultant the list of Qualified Bidders, the list of Registered Bidders, and the aggregate initial eligibility in the auction. The Auction Manager may also provide additional information regarding the indicative offers. In order to maintain confidential and proprietary information provided by bidders as part of the auction process, the identity of bidders that were successful in the Part 1 and/or Part 2 Application process and the indicative offers will be kept confidential unless released publicly by

**AEP Ohio CBP – Communications Protocols**

the Commission. The Commission may elect to keep these data confidential at its sole discretion.

## **6.6 Auction and Post-Auction**

Actual round-by-round bids by bidders will be kept confidential pursuant to the confidentiality provisions of the CBP Rules and the Master Energy Supply Agreement for as long as AEP Ohio continues to procure energy for SSO customers through this competitive bidding process.

Shortly after the close of the auction, the Auction Manager will provide the identity of the winning bidders and the number of tranches won by each winning bidder to the Commission and Commission Consultant.

The Commission may receive from the Commission Consultant a post-auction report. The Auction Manager shall review the Commission Consultant's post-auction report in un-redacted, draft form in order to provide comments prior to the final version. The Auction Manager prepares a report on the auction results for the Commission. The Auction Manager advises the winning bidders in the auction when the report has been transmitted to the Commission.

Upon acceptance of the results, the Auction Manager will notify each winning bidder of how many tranches the bidder has won and the Auction Manager will confirm the auction clearing price. The Auction Manager also will notify the unsuccessful bidders that they have not won any tranches.

## 7. APPENDIX A

### ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT

I acknowledge that I have read and understand the Communications Protocols and obligations regarding the treatment and communication of confidential information related to the auctions under the CBP to procure supply for the energy requirements of AEP Ohio's SSO customers.

I certify that I will abide by the terms and conditions of the Communications Protocols and that I will treat and communicate confidential information as specified in these Communications Protocols.

I acknowledge that I may be subject to potential injunctive action to enforce this confidentiality agreement, as well as liability from parties participating in the auctions under the CBP to procure supply for the energy requirements of AEP Ohio's SSO customers, should I be found in violation of these Communications Protocols.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Company

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Please return the signed form to the Auction Manager at: [AEP-CBP@nera.com](mailto:AEP-CBP@nera.com)

# **EXHIBIT E**

**In the Matter of the Application of )  
Ohio Power Company to Establish )  
a Competitive Bidding Process for )  
Procurement of Energy to Support its )  
Standard Service Offer )**

**Case No. 12-3254-EL-UNC**

**Exhibit E**

**NERA Summary of Experience**

**21 December 2012**

**NERA**  
ECONOMIC CONSULTING



## **Introduction**

Ohio Power Company d/b/a AEP Ohio (“AEP Ohio”), in its application to the Public Utilities Commission of Ohio (“PUCO” or “Commission”) to establish a Competitive Bidding Process (“CBP”) for procurement of energy to support its Standard Service Offer (“SSO”), is recommending NERA Economic Consulting (“NERA”) to be the auction manager for auctions under the CBP. NERA has extensive experience in conducting energy auctions and is imminently qualified to manage auctions under the CBP. We present highlights of this experience in the present document.

NERA is committed to combine in-depth expertise in auction theory, restructuring, regulation and power markets to design and manage procurement auctions using a disciplined and independent approach. NERA maintains dedicated staff trained in management of competitive bidding processes. NERA is focused on assisting Electric Distribution Utilities (“EDUs”) with procurement of supply for their SSO or default service customers. This has included a number of competitive bidding processes in a variety of jurisdictions for a range of energy products including block energy, slice-of-system products, load following class-specific products, renewable energy credits and new generation.

## **Summary of Experience**

NERA has conducted the New Jersey Basic Generation Service (“BGS”) Auctions for the four New Jersey EDUs each year since their inception in 2002. These auctions simultaneously procure full requirements service for all BGS (or default service) customers in the state. The auction format is a descending-price clock auction, which promotes transparency and market-based pricing. NERA participates in the stakeholder process regarding the design of the BGS Auction, supports the EDUs in promoting the auction opportunity, respond to all bidder inquiries and maintains a dedicated web site ([www.bgs-auction.com](http://www.bgs-auction.com)), administers the qualification process including the receipt of indicative offers and pre-bid security, manages the auctions, and submits a report to the New Jersey Board of Public Utilities (“Board”). The auctions are also monitored by Board Staff and their consultant.

In 2004, NERA was the auction manager for the first competitive bidding processes in Ohio. At that time, the PUCO had ordered the FirstEnergy Ohio EDUs to hold a descending-price clock auction as a market test for their filed Rate Stabilization Plan. The PUCO had the choice between accepting the results of the auction to procure full-requirements service for FirstEnergy's Standard Service Offer ("SSO") Load for the period January 1, 2006 to December 31, 2008 or rejecting the auction results in favor of the Rate Stabilization Plan Pricing. NERA provided advice regarding the detailed auction rules, designed the bidding procedure, and served as auction manager. NERA was also auction manager for this process in 2005.

NERA has served as auction manager as well for procurement of a variety of products to support default service customers in Pennsylvania and in Illinois. In particular:

- Since 2007, NERA is the auction manager for the PPL Electric Utilities, first under the Competitive Bridge Plan and more recently under their Default Service Programs. NERA has conducted over twenty (20) solicitations for full requirements products, block energy, and renewable energy credits.
- Since 2009, NERA is the auction manager for procurement of supply for default service customers of Philadelphia Electric Company ("PECO"). NERA has conducted up to several RFPs per year to procure full requirements products and energy blocks for a variety of customer classes and terms.
- From 2006 to 2012, NERA was the auction manager for procurement of full requirements supply for default service customers for one or more of the FirstEnergy Pennsylvania utilities, using both RFPs and descending-price clock auctions.
- From 2009 to 2012, NERA has served as Procurement Administrator for the Illinois Power Agency for procurement of block energy, renewable energy, and new renewable generation to support the default customers of Commonwealth Edison Company ("ComEd"). Previously, NERA has also served as Auction Manager for procurement of full requirements products and block energy for ComEd.

NERA also experience elsewhere nationally and internationally as auction manager for a variety of power products. Selected additional experience is provided in the following table.

**Table 1. Selected Additional Experience.**

<i>Year</i>	<i>EDU / Commission</i>	<i>Supply Up for Bid</i>	<i>Highlights</i>
2009 – 2011	Atlantic City Electric, Jersey Central Power & Light, Rockland Electric Company (New Jersey)	Up to 65 MW of new solar generation projects	<ul style="list-style-type: none"> <li>• Administer three (3) solicitations per year under a Request for Proposals</li> <li>• Maintain web site as source of information and respond to bidder inquiries</li> <li>• Evaluate proposals from qualified bidders</li> <li>• Consider input from stakeholders before presenting final recommendations for awards to the Board in a full factual report</li> </ul>
2007-2008	National Commission of Energy (Spain)	Baseload Power (2,000 MW)	<ul style="list-style-type: none"> <li>• Administer four (4) solicitations per year under a descending clock auction</li> <li>• Maintain web site as source of information and respond to bidder inquiries</li> <li>• Qualify bidders and assess creditworthiness</li> <li>• Provide full factual report to Commission</li> </ul>
2004-2007	Ontario Ministry of Energy (Canada)	2,500 MW of clean generation and 300 MW of renewable capacity, energy efficiency and demand response	<ul style="list-style-type: none"> <li>• Design and administer a solicitation under an RFP for the development of new generation capacity within the province</li> <li>• Financially-Settled New Tolling Capacity, including 2,500 MW of “clean” generation by 2007, up to 300 MW of renewable energy capacity, energy efficiency and demand response products</li> <li>• Provide advice on terms and conditions of RFP and standard contract</li> <li>• Evaluate bids</li> <li>• Model system to assess impact of new generation</li> </ul>
2005	Commission for Energy Regulation (Ireland)	400MW of new capacity	<ul style="list-style-type: none"> <li>• Design and administer an RFP during the transition to competition</li> <li>• Develop a contract structure (Gas-Indexed CFD) that would provide the financial certainty necessary for an independent generator to finance a new power plant and would allow for operation in a new market structure</li> <li>• Develop an evaluation method for the selection of one or more new generation units</li> <li>• Assess the financial worthiness of proposals for new generation</li> </ul>

<i>Year</i>	<i>EDU / Commission</i>	<i>Supply Up for Bid</i>	<i>Highlights</i>
2004	Acquirente Unico (Italy)	Purchase of energy under a contract for difference structure for 50% of Italian electricity	<ul style="list-style-type: none"> <li>• Provide advice to the default service provider (the single buyer) in Italy regarding the appropriate contract structure and contract volumes necessary to optimize their hedging and tariff requirements</li> <li>• Design and administer auction to purchase electricity contracts</li> </ul>
2003	Jersey Central Power & Light (New Jersey)	300 MW of green energy for residential customers	<ul style="list-style-type: none"> <li>• Work with stakeholder to examine various alternatives to select the proposal most likely to lead to a successful Green Power pilot program</li> <li>• Answer bidder</li> <li>• Qualify bidders and evaluate bids</li> <li>• Prepared a full factual report for the Board and recommendations for award</li> </ul>

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