

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

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**NERA**  
ECONOMIC CONSULTING

## Contents

Contents .....	i
<b>ARTICLE I. Introduction .....</b>	<b>1</b>
I.1. Background .....	1
I.2. Overview .....	2
<b>ARTICLE II. Information to Bidders .....</b>	<b>4</b>
II.1. Information Provided to Bidders .....	4
II.2. Indicative schedule .....	5
<b>ARTICLE III. Products and Auctions .....</b>	<b>6</b>
III.1. Energy Supply and Supplier Obligations .....	6
III.2. Auctions and Tranches .....	7
<b>ARTICLE IV. Pre-Auction Processes .....</b>	<b>8</b>
IV.1. Part 1 Application .....	8
IV.2. Part 2 Application .....	9
IV.3. Sanctions for Failing to Comply with the Part 1 and Part 2 Applications .....	11
IV.4. Application Processing .....	12
IV.5. Extraordinary Events .....	15
<b>ARTICLE V. Bidding in the Auction .....</b>	<b>16</b>
V.1. General .....	16
V.2. Round 1 of the Auction .....	16
V.3. Round 2 and Subsequent Rounds .....	17
V.4. End of Auction .....	18
V.5. Decrements .....	18
V.6. Miscellaneous Provisions .....	19
V.7. Bidding Procedures .....	19
<b>ARTICLE VI. Post-Auction Process .....</b>	<b>20</b>
VI.1. Notification of Results .....	20
VI.2. Execution of Master Energy Supply Agreement .....	21
<b>ARTICLE VII. Contingency Plans .....</b>	<b>22</b>
<b>ARTICLE VIII. Associations and Handling of Confidential Information .....</b>	<b>24</b>
VIII.1. Process for Reporting Associations, Identifying Concerns and Remedies .....	24
VIII.2. Confidential Information .....	25
VIII.3. Certifications and Disclosures – Part 1 Application .....	25
VIII.4. Certifications and Disclosures – Part 2 Application .....	26
VIII.5. Miscellaneous .....	28

<b>ARTICLE IX.</b>	<b>Miscellaneous .....</b>	<b>30</b>
<b>IX.1.</b>	<b>Warranty on Information .....</b>	<b>30</b>
<b>IX.2.</b>	<b>Hold Harmless .....</b>	<b>30</b>
<b>IX.3.</b>	<b>Bid Submissions Become AEP Ohio's Property .....</b>	<b>30</b>
<b>IX.4.</b>	<b>Bidder's Acceptance.....</b>	<b>30</b>
<b>IX.5.</b>	<b>Permits, Licenses, Compliance with the Law and Regulatory Approvals .....</b>	<b>30</b>

## **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 Order”). The ESP II Order 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 percentage of supply procured for each of the three (3) delivery periods will be 10%, an additional 50%, and a final 40%.
- I.1.4.** On December 21, 2012, AEP Ohio filed an Application to establish its CBP (Case No. 12-3254-EL-UNC), which it developed with input from interested stakeholders. On January 30, 2013, the Commission issued its Entry on Rehearing in Case No. 11- 346-EL-SSO et al., which addressed certain issues relating to AEP Ohio’s energy auctions. On January 31, 2013, the Commission issued an Entry that gave AEP Ohio the opportunity to amend or supplement its Application in view of the ESP II Rehearing Order. AEP Ohio filed a Supplement to its Application relating to the recovery of auction-related costs through retail rates on February 11, 2013. On March 27, 2013, the Commission issued its Second Entry on Rehearing in the ESP II case.
- I.1.5.** On November 13, 2013 the Commission issued an Opinion and Order approving AEP Ohio’s CBP (“CBP Order”). The CBP Order specifies the following elements of the CBP:
- The 10% auction will be conducted in February 2014 for delivery starting April 1 2014;
  - A first 25% auction will be conducted in May 2014 while a second 25% auction will be conducted in September 2014, each for delivery starting November 1, 2014; and
  - The remaining 40% auction will be conducted in November 2014 for delivery starting January 1, 2015.
- I.1.6.** 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.
- I.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 on April 1, 2014 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 on November 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 adjusted if it is necessary to foster bidder interest.
- I.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.
- I.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.
- I.2.5.** The term “bidder” is used generically to refer to a prospective bidder, a Qualified Bidder, or a Registered Bidder.
- I.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.

- I.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 the 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 will include 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 "results" page that provides information regarding the results of previous auctions held under the CBP.
  - 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.
- 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 the 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. Any change to this schedule will be announced to bidders and posted on the CBP website.

**Table 1. Indicative Schedule.**

Event	Date
Alternate guaranty process begins	Thursday, December 05, 2013
Bidder Information Session	Thursday, December 12, 2013
Auction Manager announces tranche target, tranche size, MW-measure, minimum and maximum starting prices	Thursday, December 12, 2013
Alternate guaranty process ends	Friday, December 20, 2013
Part 1 Window opens	9 AM on Thursday, January 02, 2014
Part 1 Applications are due	By 12 PM (noon) on Friday, January 17, 2014
Part 1 Notification Date	Thursday, January 23, 2014
Part 2 Window opens	9 AM on Friday, January 24, 2014
Auction Manager announces any update to the MW-measure and announces seasonal factors	Tuesday, February 04, 2014
Part 2 Applications are due	By 12 PM (noon) on Thursday, February 13, 2014
Part 2 Notification Date	Wednesday, February 19, 2014
Bidder User Manual Distributed	Wednesday, February 19, 2014
Trial Auction for Registered Bidders	Thursday, February 20, 2014
Auction Manager informs Registered Bidders of round 1 prices	Thursday, February 20, 2014
Auction begins	Tuesday, February 25, 2014
Auction Manager notifies AEP Ohio and the Commission of results	On day of auction close
End of Commission review period	Within two days of the auction close
Master Energy Supply Agreements Signed	Within three days of end of Commission review
Power Flow	Tuesday, April 01, 2014

- 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.

## **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. The summary in this section 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 via the PJM InSchedule system. 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. Suppliers will be responsible for and be paid by AEP Ohio for the scheduled energy adjusted for estimation, billing, metering and other errors.
- III.1.7. Power purchased through the CBP will be considered a prudent purchased power transaction in the wholesale market dedicated to AEP Ohio SSO customers and passed through AEP Ohio’s retail rates.
- III.1.8. 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, which will take place in February 2014. The delivery period will begin on April 1, 2014 and end on May 31, 2015.
- III.2.3. The second auction, which will take place in May 2014, will procure 25% of the Energy Load for a delivery period beginning November 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 September 2014, will also procure 25% of Energy Load for a delivery period beginning November 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 November 2014, will procure 40% of the 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%.
- III.2.6. While the fixed percentage assigned to a tranche for the second auction onwards is expected to remain at 1%, it may be adjusted if there is a significant load reduction or an adjustment is necessary to foster bidder interest. Such an adjustment in the tranche size would be determined by the Auction Manager in consultation with Commission Staff and announced to bidders no later than eight (8) days prior to the Part 1 Date. AEP Ohio will not have a role in the decision to adjust the tranche size.

## 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 and comply with the creditworthiness requirements set forth in the Master Energy Supply Agreement within three (3) days of acceptance of the auction results by the Commission;
- 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 four (4) 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. A Qualified Bidder 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, providing 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 the bidder is 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 a pre-bid letter of credit or cash 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, in addition to a pre-bid letter of credit or cash, 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, in addition to a pre-bid letter of credit or cash, be required to submit a letter of reference from a bank and would be so advised in its Part 1 Notification.

IV.2.9. A bidder that posts cash must request wire instructions from the Auction Manager and must acknowledge the conditions under which such cash may be drawn.

IV.2.10. 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.2.11. Pre-bid security 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 pre-bid letter of credit or cash will be 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.2.12. AEP Ohio can collect on the pre-bid letter of credit or AEP Ohio can draw upon cash posted for 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.2.13. 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.2.14. Bidders will have the opportunity to participate in an Alternate Guaranty Process in advance of qualification. AEP Ohio and the Auction Manager will consider only an alternate form of guaranty if it has been used by the guarantor in its normal course of business. The Alternate Guaranty Process, including specific criteria for approval, is described in the Alternate Guaranty Process document. In particular, the alternate form of guaranty must provide credit protections to AEP Ohio and its customers that are substantially similar to the credit protections provided to AEP Ohio by the standard form of guaranty. A supplier unable to use the standard form of guaranty provided as Attachment D to the Master Energy Supply Agreement may submit an alternate form of guaranty for consideration by AEP Ohio including any required modifications, revisions, and other documents identified as necessary for acceptability by AEP Ohio.
- IV.2.15. 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 five (5) 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.2.16. 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.2.17. 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.2.18. The Auction Manager will also provide to AEP Ohio, Commission Staff and the 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 processes, 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 addresses 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 or 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. Bidders are expected to use the online Part 1 Form to submit the electronic Part 1 Form and to upload required documents. Bidders may elect to provide their materials in hardcopy by post or by hand-delivery with appropriate notice to the Auction Manager. 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 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" if the Part 1 Form was received in hardcopy).
- 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 that are qualified pursuant to a successful Part 1 Application are Qualified Bidders.
- IV.4.9. The Auction Manager will notify each Qualified Bidder 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 pre-bid 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. A Qualified Bidder 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 Part 2 Applications.
- IV.4.11. The exclusive method of responding to the requirements 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 or cash, 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. Bidders are expected to use the online Part 2 Form to submit the electronic Part 2 Form but bidders may elect to provide these materials in hardcopy by post or by hand-delivery. Bidders are required to provide executed originals of pre-bid security documents by overnight delivery service or hand-delivery. 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 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 security. For matters related to the pre-bid security, 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" if the Part 2 Form was received in hardcopy).
- 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 that 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 and verified 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” is a last and best offer for the tranches withdrawn. 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 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 available 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. AEP Ohio can collect on the pre-bid letter of credit or AEP Ohio can draw upon cash posted if a 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 pre-bid letter of credit or to draw upon cash posted, 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 under the CBP.
- If the delivery period for the unfilled tranches begins prior to the first day of the second month after the next auction under the CBP, AEP Ohio will procure the corresponding Energy Load in PJM-administered markets. The unfilled tranches when offered in the next auction 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 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 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, 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, 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 during the auction.
- VIII.2.3. Absolute protection from public disclosure of the bidders' data and information submitted as part of the CBP cannot be provided. By participating in the CBP, 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 that the bidder's data and information submitted as part of the CBP 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 the 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 the CBP 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 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, providing 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.
- 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, 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 that will provide similar advice or assistance to another Qualified Bidder, or that 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.
- VIII.4.8. Each bidder must certify that it will not disclose Confidential Information Relative to its Bidding Strategy except to: (i) 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, bidding consortium, or other arrangement pertaining to bidding in the auction; (ii) bidders with which it is associated as disclosed in the Part 2 Application; (iii) its Advisors; and (iv) its financial institution. A bidder that is unable to make this certification must identify the entity receiving such information and must explain the reasons for such disclosure. .

- 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, joint venture for purposes of the auction, 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 AEP Ohio can collect on the pre-bid letter of credit or AEP Ohio can draw upon cash posted upon failure to execute the Master Energy Supply Agreement within three (3) days of the acceptance of the auction results by the Commission.
- 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 but not limited to the number of Registered Bidders, the identity of any one of the Registered Bidders (including the bidder itself), 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 identify the party receiving such information and must explain the reasons for such disclosure.
- 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 identify the entity receiving such information and must explain the reasons for such disclosure.
- 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 in 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.

### **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.

