

**DUKE ENERGY OHIO**

**FRR PROGRAM FOR 2011 – 2012, 2012 – 2013, and 2013 – 2014 DELIVERY PERIODS**

**FERC DOCKET NO. ER10-1562 & ER10-2254**

**CAPACITY PAYMENT AGREEMENT**

**BETWEEN**

**DUKE ENERGY OHIO, INC.**

**AND**

[\_\_\_\_\_]

**2013 – 2014 DELIVERY PERIOD<sup>1</sup>**

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<sup>1</sup> 2013-2014 refers to the period beginning on June 1, 2013 and ending on May 31, 2014.

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## CAPACITY PAYMENT AGREEMENT

**THIS CAPACITY PAYMENT AGREEMENT** (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 2011 (the “Effective Date”) by and between Duke Energy Ohio, Inc. (“DEO”) a corporation organized and existing under the laws of the State of Ohio, and [\_\_\_\_\_] (the “Participating LSE”). DEO and the Participating LSE are referred to herein individually as a “Party,” and collectively as the “Parties.”

### WITNESSETH:

**WHEREAS**, on June 25, 2010, DEO, an Affiliate of Duke Energy Corporation, applied for initial authorization to integrate the Duke Energy Transmission Zone into PJM and, subsequently, on August 16, 2010, as part of that application, DEO filed a request for approval of a process (the “FRR Plan”) that would be used to procure Capacity for the Duke Energy Transmission Zone during the 2011 – 2012 (January 1, 2012 – June 1, 2012), 2012 – 2013 and 2013 – 2014 Delivery Periods; and

**WHEREAS**, pursuant to FERC’s Order Addressing RTO Realignment Request (the “Realignment Order”) in Docket Nos. ER10-1562 and ER10-2254, dated as of October 21, 2010, and the FERC approval of the FRR Plan, and subject to certain future filings, the Duke Energy Transmission Zone will be integrated into the PJM Balancing Authority effective as of January 1, 2012; and

**WHEREAS**, subject to and in reliance on the terms hereof, DEO will procure and manage the Capacity necessary to satisfy the Participating LSE’s Net Capacity Obligation during the Delivery Period; and

**WHEREAS**, the Participating LSE will pay DEO's costs to procure and manage the Capacity necessary to satisfy each Participating LSE's Net Capacity Obligation during the Delivery Period; and

**WHEREAS**, certain Participating LSEs have elected to "opt-out" of the FRR Plan for all or a portion of their Maximum Opt-Out Amount as described in the Application and the Realignment Order, and the FRR Plan filed with FERC under Docket No. ER10-2254; and DEO is willing, if applicable and subject to the terms and conditions set forth herein and in reliance thereon, to forego procuring the Capacity required to meet the Actual Opt-Out Amount portion of such LSE's Total Capacity Obligation; and

**WHEREAS**, DEO and the Participating LSE desire to enter into this Agreement setting forth their respective obligations; and

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

**ARTICLE 1: DEFINITIONS**

Capitalized or abbreviated terms not defined in this Article 1 or elsewhere in this Agreement will have the definitions set forth in the PJM Agreements. To the extent the definitions in the PJM Agreements conflict, the definitions to be used herein shall be determined in accordance with the following priority: first, the PJM RAA, second, the PJM Operating Agreement, and third, the PJM OATT. Reference to an agreement, contract or documents includes any subsequent amendments to such agreement, contract or documents unless otherwise

stated herein. Reference to a Party includes that Party's successors and permitted assigns.

Reference to a Governmental Authority includes an entity succeeding to its functions. All

monetary amounts contained in this Agreement refer to the currency of the United States.

**Actual Opt-Out Amount** means, with respect to each Participating LSE that elects to opt-out a portion of its Total Capacity Obligation, the actual portion of the PJM reliability requirement that such LSE elects to self-supply, which shall be fixed on an annual basis. With respect to each Participating LSE that does not opt out in whole or in part, the Actual Opt-Out Amount shall be zero.

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

**Agreement** has the meaning set forth in the preamble.

**Application** means the application that DEO filed with FERC on June 25, 2010 in FERC Docket No. ER10-1562.

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

**Business Day** means any day except a Saturday, Sunday or a day that PJM declares to be a holiday, as posted on the PJM website. A Business Day opens at 8:00 a.m. and closes at 5:00 p.m. Eastern Prevailing Time.

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

**Capacity Resource** has the meaning set forth in Section 1.8 of the PJM RAA, provided, however, that for purposes of this Agreement, Capacity Resources shall only mean Generation Capacity Resources (including Planned Generation Capacity Resources), Demand Resources (including Planned Demand Resources) and Energy Efficiency Resources.

**Capacity Supplier** means a supplier from which DEO has procured Capacity to satisfy the Capacity requirement for the Duke Energy Transmission Zone for the Delivery Period as determined by PJM.

**Charge** means FRR Reliability Charge, Schedule 9-5 Charges, and Schedule 9-6 Charges.

**Delivery Period** means June 1, 2013 at 12:00:01 a.m. Eastern Prevailing Time through and including May 31, 2014.

**DEO** has the meaning set forth in the preamble.

**Dispute** has the meaning set forth in Section 7.1.

**Duke Energy Transmission Zone** means the set of electrical locations that are provided transmission service by DEO.

**Duke FRR Plan Load Settlements Approach Summary** means the document available on the PJM Duke Integration web site, at <http://www.pjm.com/markets-and-operations/market-integration/~media/markets-ops/duke-integration/duke-frr-plan-load-settlements-summary.ashx>.

**Eastern Prevailing Time** means either Eastern Standard Time or Eastern Daylight Savings Time, as in effect from time to time.

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

**FERC** means the Federal Energy Regulatory Commission.

**Final Zonal Capacity Price** means the PJM price for Capacity for the Delivery Period which all load pays for unforced Capacity in the unconstrained region as set forth in the PJM OATT.

**FRR** has the meaning set forth in the PJM Agreements.

**FRR Integration Plan** means the bilateral Capacity procurement process and commitment to the Duke Energy Transmission Zone performed by DEO for the Delivery Period in accordance with the Realignment Order.

**FRR Plan** has the meaning set forth in the recitals to this Agreement.

**FRR Reliability Charge** means an amount equal to the Participating LSE's Net Capacity Obligation in MWs multiplied by the Final Zonal Capacity Price; or such other price as FERC may approve.

**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.

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

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

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

**Maximum Opt-Out Amount** means, with respect to each Participating LSE that elects to opt-out of a portion of its Total Capacity Obligation, the maximum allowable portion of the PJM reliability requirement that such LSE may self-supply, based on such LSE's load as of December 31, 2010 for the Delivery Period.

**MW** means megawatt.

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

**Net Capacity Obligation** means, with respect to each Participating LSE that elects to opt-out of a portion of its Total Capacity Obligation, the Total Capacity Obligation less the Actual Opt-Out Amount. With respect to each Participating LSE that does not opt out in whole or in part, the Net Capacity Obligation shall be equal to the Total Capacity Obligation.

**Network External Designated Transmission Service** means network transmission used by load serving entities in PJM to serve customer load from designated resources located outside the PJM Control Area.

**Notice** has the meaning set forth in Section 10.1.

**Participating LSE** has the meaning set forth in the preamble.

**Party or Parties** has the meaning set forth in the preamble, and includes each Party's successors and permitted assigns.

**Performance Assurance** means cash, a guaranty in a form reasonably acceptable to DEO, or a Letter of Credit provided by the Participating LSE to DEO to secure its obligations under Article 5 of this Agreement.

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

**PJM** means PJM Interconnection, LLC.

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

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

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

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

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

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

**Realignment Order** has the meaning set forth in the recitals to this Agreement.

**Resource Plan** has the meaning set forth in Section 2.4.

**S&P** means Standard and Poor's Rating Services (a division of McGraw-Hill, Inc.) or its successor.

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

**Taxes** has the meaning set forth in Section 10.8.

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

**Total Capacity Obligation** means, with respect to each Participating LSE, the Capacity obligation based on load being served by the LSE in the Duke Energy Transmission Zone, measured at the time the LSE has to meet the Capacity obligation for the Delivery Period.

**UCC** means the Uniform Commercial Code.

**ARTICLE 2: GENERAL TERMS AND CONDITIONS**

**2.1 DEO Utilities' Obligations Regarding the Procurement and Management of Capacity**

DEO shall exercise good utility practice in the procurement and management of the Capacity necessary to satisfy the Participating LSE's Net Capacity Obligation for the Delivery Period.

**2.2 Determination of Actual Opt-Out Amount; Relationship to Total Capacity Obligation**

(a) Only a Participating LSE that is a Certified Retail Electric Supplier may elect to opt-out a portion of its Total Capacity Obligation. The Participating LSE may elect to opt-out up to the Maximum Opt-Out Amount or only a portion thereof. The amount opted out shall be the Actual Opt-Out Amount. After the determination of and declaration of the Actual Opt-Out Amount is made, the Actual Opt-Out Amount cannot be increased or decreased. The Participating LSE hereby accepts such Actual Opt-Out Amount as binding for the Delivery Period.

(b) If and to the extent the Participating LSE's Total Capacity Obligation differs from its Actual Opt-Out Amount, whether as a result of change in load or otherwise, the difference shall be the Net Capacity Obligation. The Participating LSE's Net Capacity Obligation will be fulfilled by DEO, and the Participating LSE will pay or be paid for the Net Capacity Obligation per this Agreement.

**2.3 Election to Opt-Out**

If the Participating LSE elects to opt-out a portion of its Total Capacity Obligation, it hereby acknowledges, agrees, states and confesses that it has elected to “opt-out” of the FRR Plan its Actual Opt-Out Amount.

#### **2.4 Resource Plan**

(a) If the Participating LSE elects to opt-out a portion of its Total Capacity Obligation, it has provided PJM with a resource plan by March 31, 2011 which is attached hereto as Appendix C (the “Resource Plan”) and which sets forth the Participating LSE’s plan to obtain the Capacity required to satisfy the Actual Opt-Out Amount during the Delivery Period.

(b) On or before the March 31, 2011 Resource Plan submission deadline, if the Participating LSE elects to opt-out a portion of its Total Capacity Obligation, it shall own or have the contractual authority to control the Capacity or load reduction capability of any Capacity Resource listed in its Resource Plan, in an amount that is at least equal to the Actual Opt-Out Amount, and shall not have transferred such authority to another entity.

(c) Each Capacity Resource identified in the Participating LSE’s Resource Plan shall be committed exclusively to PJM during the Delivery Period and shall not be committed, obligated or operated in any manner such that it is not available to meet the Actual Opt-Out Amount during the Delivery Period.

#### **2.5 Participating LSE’s Payment Obligations**

(a) During the Delivery Period, the Participating LSE shall pay the FRR Reliability Charge necessary to satisfy the Participating LSE’s Net Capacity Obligation for the Delivery Period.

(b) The Participating LSE shall pay to PJM, by the payment deadline stated on the PJM invoice, all Charges for which PJM bills it in each Billing Period in accordance with Section 6.1.

## **2.6 PJM Membership; PJM Protocols and Requirements**

(a) At all times during the Delivery Period, the Participating LSE shall be a member in good standing of PJM and qualified by PJM as a Market Buyer pursuant to the PJM Agreements.

(b) At all times during the Delivery Period, the Participating LSE shall be bound by the PJM Agreements, PJM Manuals, the Duke FRR Plan Load Settlements Approach Summary, and any other operating instructions, policies and procedures set forth by PJM as may be necessary to implement this Agreement and the Resource Plan, if applicable.

## **2.7 Notice of Non-Compliance**

(a) The Participating LSE shall promptly, and always within three (3) Business Days, give Notice to DEO of its failure to timely perform any obligation under this Agreement, including but not limited to (i) failure to pay the Charges pursuant to this Article 2; (ii) failure to satisfy its Total Capacity Obligation during the Delivery Period pursuant to Section 2.2; and (iii) failure to provide and maintain adequate Performance Assurance pursuant to Article 5.

(b) The Participating LSE shall promptly, and always within three (3) Business Days following the date on which it gains actual or constructive knowledge of any such event or circumstance, give Notice to DEO of any event or circumstance which the Participating LSE reasonably believes could adversely impact its ability to timely perform any obligation under this Agreement.

(c) If the Participating LSE elects to opt-out a portion of its Total Capacity Obligation, it shall promptly, but in any event within three (3) Business Days, notify PJM (in accordance with the notice provisions at Section 10.1) upon becoming aware of (i) any information contained in the Resource Plan that is no longer true and correct in all respects or (ii) any event or circumstance which gives rise to a need to revise its Resource Plan in order to satisfy the Actual Opt-Out Amount. Within three (3) Business Days following delivery of any notice in accordance with this Section 2.7(c), the Participating LSE will deliver to PJM and DEO an amended Resource Plan that, as applicable, corrects any incorrect or inaccurate information therein and includes any modifications to such Resource Plan which are necessary or advisable to allow the Participating LSE to satisfy the Actual Opt-Out Amount pursuant to such amended Resource Plan.

(d) If the Participating LSE becomes aware that any of the representations or warranties in Article 3 are no longer true and correct at any time during the Term, or of any event that may reasonably be expected to cause any of such representations or warranties to become no longer true and correct in the future, the Participating LSE shall immediately, and always within three (3) Business Days following the date on which it gains actual knowledge thereof, give Notice to DEO.

## **2.8 Regulatory Authorizations**

(a) The Participating LSE and DEO shall obtain and maintain throughout the Delivery Period the regulatory authorizations required by FERC.

(b) The Participating LSE shall cooperate in good faith with DEO 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 requirements in connection with this Agreement before FERC or any other Governmental Authority.

## **2.9 Transmission Service**

(a) Prior to the Delivery Period, if the Participating LSE elects to opt-out a portion of its Total Capacity Obligation and is relying on Capacity Resources that are located within the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, it shall have obtained written confirmation from PJM that such Capacity Resource is deliverable to the PJM Balancing Authority at all times during the Delivery Period. Prior to the commencement of the Delivery Period, if the Participating LSE elects to opt-out a portion of its Total Capacity Obligation and relies on Capacity Resources that are external to or located outside of the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, it must demonstrate to the satisfaction of PJM and DEO that it is capable of delivering its Capacity Resource to the metered boundaries of the PJM Balancing Authority through firm point-to-point transmission service from the external unit to the border of PJM and generation deliverability has been demonstrated into PJM by either (x) firm point-to-point transmission service on the PJM OASIS or (y) Network External Designated Transmission Service.

(b) Except as provided for in the PJM Agreements and any PJM Manuals, neither PJM nor DEO shall have any obligation, duty or requirement under this Agreement to arrange for or provide for delivery of the Capacity described in the Resource Plan, if applicable.

## **ARTICLE 3: REPRESENTATIONS AND WARRANTIES**

The Participating LSE hereby represents and warrants to DEO as follows:

(a) it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of organization and is duly registered, authorized to do business, and in good standing in all states in which it does business;

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

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

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

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

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

(g) it is capable of understanding, understands, and accepts the terms, conditions, and risks of this Agreement, it is not relying upon the advice or recommendations of any other party

in entering into this Agreement, and no other party is acting as a fiduciary for or advisor to it in respect of this Agreement;

(h) 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;

(i) as of the commencement of the Delivery Period, it is in compliance with its obligations pursuant to Section 2.6(a);

(j) it is knowledgeable and capable of adhering to all PJM-related protocols necessary to conduct its business;

(k) in accordance with the Resource Plan, if applicable, (i) it has obtained Capacity in the form and of the type that will satisfy the Actual Opt-Out Amount in the Duke Energy Transmission Zone for the Delivery Period, (ii) it has complied in all respects with its obligations under the Resource Plan, and (iii) the information contained in the Resource Plan is true and correct in all respects;

(l) if it is relying on Capacity Resources that are located within the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, on or prior to the commencement of the Delivery Period, it has obtained written confirmation from PJM that such Capacity Resource is deliverable to the PJM Balancing Authority throughout the applicable Delivery Period;

(m) if it is relying on Capacity Resources that are located outside the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, on or prior to the commencement of the Delivery Period, it (i) has indicated in its Resource Plan its intended

ATC path to deliver its Capacity Resource to the metered boundaries of the PJM Balancing Authority and (ii) demonstrated to the satisfaction of PJM that, as of the commencement of the Delivery Period, it will be capable of delivering its Capacity Resource to the metered boundaries of the PJM Balancing Authority through firm point-to-point transmission service from the external unit to the border of PJM and generation deliverability has been demonstrated into PJM by either (x) firm point-to-point transmission service on the PJM OASIS or (y) Network External Designated Transmission Service;

(n) if it is relying on planned Capacity Resources or Capacity Resources that are located outside the metered boundaries of the PJM Balancing Authority that do not yet have firm point-to-point transmission service from the external unit to the border of PJM to meet the Actual Opt-Out Amount, it has met the PJM credit requirements associated with the commitment of such resources, as outlined in Section 4.8 of PJM Manual 18; and

(o) it owns or has the contractual authority to control the Capacity or load reduction capability of any Capacity Resource listed in its Resource Plan, in an amount that is at least equal to the Capacity required by PJM to serve its load for the Delivery Period, and has not transferred such authority to another entity.

## **ARTICLE 4: TERM; SURVIVAL OF OBLIGATIONS**

### **4.1 Term**

(a) The term of this Agreement will commence upon the Effective Date and continue through the end of the Delivery Period (the “Term”).

(b) Notwithstanding anything contained in this Agreement, if DEO determines that PJM does not have operational control over the Duke Energy Transmission Zone on or before the commencement of the Delivery Period, this Agreement shall terminate and any Performance Assurance held by DEO shall be returned to the Participating LSE within thirty (30) Business Days of such determination.

#### **4.2 Survival of Obligations**

Termination of this Agreement for any reason shall not relieve the Participating LSE of any obligation accruing on or before such termination. All provisions of this Agreement which must, to give full force and effect to the rights and obligations of the Parties, survive the termination or expiration of this Agreement, shall so survive, including all provisions of Articles 5, 7, 8, 9, and 10 and Sections 4.2 and 6.2(g).

### **ARTICLE 5: PERFORMANCE ASSURANCE**

#### **5.1 Credit Requirements; Performance Assurance**

To meet the credit requirements (the “Credit Requirements”) for unsecured credit under this Agreement each Participating LSE must (1) be rated by at least one of the following rating agencies: Moody’s, or S&P and (2) have a minimum senior unsecured debt rating (or if unavailable, corporate issuer rating) of at least BBB- by S&P, or Baa3 by Moody’s. If the Participating LSE is rated by both S&P and Moody’s, and the ratings are split, the lower rating will be used. Each Participating LSE that does not meet the Credit Requirements shall post Performance Assurance in the amount of \$14,500 per MW of its Net Capacity Obligation within one (1) Business Day of the Effective Date. DEO will hold the Performance Assurance through

the end of the Delivery Period and shall return such Performance Assurance, less any amount offset against such Performance Assurance for claims, along with, in the case of cash, any interest thereon calculated in accordance with Section 5.4, to the Participating LSE within thirty (30) Business Days of the expiration of the Delivery Period.

## **5.2 Acceptable Forms of Security**

At each Participating LSE's choice, each of the following are deemed to be acceptable forms of Performance Assurance:

(a) An absolute, unconditional, and irrevocable guarantee issued to DEO by a parent company or other corporate entity acceptable to DEO that meets the Credit Requirements. The guaranty shall be drafted on a form acceptable to DEO, shall secure all of Participating LSE's obligations under the Agreement and shall remain in full force and effect until the earlier of the occurrence of any of the following: (i) all of Participating LSE's obligations under the Agreement have been satisfied in full and the Agreement has been terminated, (ii) the guaranty is replaced with substitute Performance Assurance meeting the requirements in the Agreement or (iii) Participating LSE meets the Credit Requirements;

(b) cash credited to a deposit account of DEO; and

(c) 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 DEO receives notice from the issuing financial institution that the Letter of Credit is being cancelled, the Participating LSE will be required to provide a substitute Letter of Credit

from an alternative bank satisfying the minimum credit rating set forth in the definition of “Letter of Credit” within three (3) Business Days. The receipt of the substitute Letter of Credit must be effective as of the cancellation date and delivered to DEO thirty (30) days before the cancellation date of the original Letter of Credit. If the Participating LSE fails to supply a substitute Letter of Credit as required, then DEO will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

If the credit rating of a bank or other financial institution from which a Participating LSE has obtained a Letter of Credit falls below the levels set forth in the definition of “Letter of Credit”, the Participating LSE will immediately notify DEO and, within three (3) Business Days of the failure of the financial institution to meet the required credit rating, obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by DEO. If the Participating LSE fails to supply a substitute Letter of Credit as required, then DEO will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

The Participating LSE shall also inform DEO immediately of any changes in its own credit rating or financial condition or the credit rating of its guarantor which, in the case of the Participating LSE, would cause it not to meet the Credit Requirements. If the Participating LSE either: (i) elects to opt out a portion of its Total Capacity Obligation; or (ii) the Participating LSE enters into an Independent FRR Plan with PJM; it shall satisfy the necessary credit requirements and performance assurance required by PJM. Without limiting the foregoing, the Participating LSE shall, upon the written request of DEO, affirmatively demonstrate in a manner satisfactory to DEO its compliance with the creditworthiness standards set forth hereunder.

Notwithstanding anything in this Agreement to the contrary, DEO may exercise any rights or claims to any Performance Assurance posted, delivered or pledged to it under this Agreement, before, after, concurrently with, or to the exclusion of, any other Performance Assurance posted, delivered or pledged to DEO.

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

To secure its obligations under this Agreement, the Participating LSE hereby grants to DEO a present and continuing security interest in, lien on, and right of setoff against its right, title, and interest, whether now owned or hereafter acquired or arising, in (i) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash, and other tangible property delivered by the Participating LSE or its agents or custodians to and held by DEO pursuant to this Agreement and (ii) all proceeds (as defined in the UCC) of any and all of the foregoing. The Participating LSE agrees to take such action as reasonably required to create and perfect DEO's first priority security interest in, lien on, and right of setoff against such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or during any occurrence of default by a Participating LSE of its obligation under this Agreement or a misrepresentation by it, DEO may, in either order: (i) exercise any of its rights and remedies, including the right to set-off and liquidation, against any and all Performance Assurance or other collateral of such Participating LSE in the possession of DEO, including any such rights and remedies under law then in effect, free from any claim or right of any nature of such Participating LSE and (ii) draw on any outstanding Letter of Credit provided by such Participating LSE. Upon the exercise of such rights or remedies, DEO will apply the

proceeds of the Performance Assurance realized to reduce such Participating LSE's obligation under this Agreement, and such Participating LSE shall remain liable for any amounts owed to DEO after such application, subject to DEO's obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

All Notices, demands, or requests regarding Performance Assurance or deposit transfers shall be sent in accordance with Section 10.1.

#### **5.4 Interest on Cash Held by DEO**

DEO will pay simple interest calculated at the Interest Index on all cash held by DEO pursuant to this Agreement.

### **ARTICLE 6: BILLING AND SETTLEMENT**

#### **6.1 PJM Billing**

For each Billing Period, PJM will invoice the Participating LSE its FRR Reliability Charge, Schedule 9-5 Charges, and Schedule 9-6 Charges, and each Participating LSE shall pay all such charges when due. PJM will assess to DEO a corresponding credit after PJM receives payment for such Charges from the Participating LSE. For Participating LSEs that opt-out a portion of their Total Capacity Obligation, if their Net Capacity Obligation is less than the Actual Opt-Out Amount, the Participating LSE will receive a negative charge (credit) for the difference, as detailed in the Duke FRR Plan Load Settlements Approach Summary.

#### **6.2 DEO Statement**

If DEO must make payment to PJM due to the Participating LSE's failure to perform its obligations under this Agreement:

- (a) DEO shall prepare and provide an invoice to the Participating LSE showing all amounts due to DEO (the “Statement”).
- (b) The Participating LSE shall make payment within ten (10) Business Days of receipt of the Statement.
- (c) All payments shall be subject to adjustment for any arithmetic, computation, or other errors, provided that the errors become known within one (1) year of the end of the Term.
- (d) The Participating LSE shall make payments of funds by electronic transfer to a bank designated by DEO.
- (e) If a good faith dispute arises between DEO and the Participating LSE regarding a Statement, the Participating LSE shall be obligated to pay only the undisputed portion of the Statement when due, and shall present the dispute in writing and submit supporting documentation to DEO within thirty (30) calendar days from the date of the Statement in dispute. Statement disputes must be addressed promptly and in accordance with the dispute resolution procedures set forth in Article 7. Upon resolution of a Statement dispute, any payments made to DEO will include simple interest at the Interest Index payable from the date that Notice of a Statement dispute was received by DEO.
- (f) If payment is made to DEO after the due date shown on the Statement, a late fee will be added to the undisputed unpaid balance until the entire Statement is paid. This late fee will be calculated at the Interest Index.
- (g) In the event of a good faith dispute regarding any Statement, the Participating LSE will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and

records of DEO, such relevance to be determined by DEO. The right of verification will survive for one (1) year following the end of the Term.

**ARTICLE 7: DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION**

**7.1 Negotiation**

Any dispute, controversy, or claim arising out of or relating to this Agreement or the breach, termination, or validity thereof (“Dispute”) shall be subject to the dispute resolution procedures specified in this Article 7. If any Dispute arises between any Parties in connection with this Agreement, such Parties in Dispute shall first attempt to resolve such Dispute by negotiation. The disputing Parties shall comply with the procedures in this Section 7.1 before commencing litigation under Section 7.2. When any such Dispute arises, the disputing Party shall deliver a written Notice of Dispute to the other Party or Parties involved. Notice of Dispute shall include the nature of the Dispute, the amount involved, if any, and the remedies sought. Within ten (10) Business Days after the receipt of such Notice, members of the senior management of the Parties in dispute shall meet in person or by telephone to discuss the Dispute. If such Parties have not resolved such Dispute for any reasons within thirty (30) days after receipt of the Notice of dispute, then any such Party may bring such action at law or in equity as it deems necessary or desirable, in accordance with the provisions of Section 7.2. Any amounts that are owed by one Party to another Party as a result of resolution of a Dispute pursuant to this Section 7.1 shall be paid within three (3) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

## **7.2 Formal Dispute Resolution**

All Disputes between the Parties that are not resolved in accordance with Section 7.1 shall be submitted to any of the courts of competent jurisdiction located in Hamilton County, Ohio, which courts shall have exclusive jurisdiction to settle such Disputes. Each Party hereto unconditionally and irrevocably agrees to submit to the jurisdiction of the aforesaid courts for the purpose of any such proceedings and unconditionally and irrevocably waives any objections which they may have, now or in the future, to the jurisdiction of such courts, including without limitation, objections by reason of lack of personal jurisdiction, improper venue, or inconvenient forum.

## **ARTICLE 8:           LIMITATION OF LIABILITY**

Each Party will be liable to the other for direct damages incurred as a result of such Party's failure to comply with this Agreement, and no Party will have any liability to the other Party for consequential, indirect, special, or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement.

## **ARTICLE 9:           [RESERVED]**

## **ARTICLE 10:         MISCELLANEOUS PROVISIONS**

### **10.1 Notices**

All Notices, demands, or requests required or permitted under this Agreement must be in writing and must be personally delivered or sent by email, overnight express mail, courier

service, or facsimile transmission (provided that in the case of an email or facsimile, the original shall then be transmitted by any of the other aforementioned delivery methods) addressed as follows:

If to the Participating LSE:

Notification information for each Participating LSE is set forth on Appendix A.

If to DEO:

In the case of all Notices except those required under Article 5, to:

Primary:  
Contract Administrator  
c/o Tracy Hemsink  
139 East Fourth Street  
Room EA602  
Cincinnati, OH 45202  
Telephone: (513) 419-5383  
Email: [tracy.hemsink@duke-energy.com](mailto:tracy.hemsink@duke-energy.com)

Copy to:  
Deputy General Counsel, Commercial Operations  
139 East Fourth Street  
1303 Main  
Cincinnati, Ohio 45202  
Telephone: (513) 287-4343  
Fax: (513) 287-4385  
Email: [kate.moriarty@duke-energy.com](mailto:kate.moriarty@duke-energy.com)

In the case of all Notices required under Article 5, to:

Credit Risk Department  
c/o John Gatto  
139 East Fourth Street  
Room EA601  
Cincinnati, OH 45202  
Telephone: (513) 419-5446  
Email: [john.gatto@duke-energy.com](mailto:john.gatto@duke-energy.com)

or to such other Person or such other address as a Party may designate by notice to the other Party. Notice received after the close of the Business Day will be deemed received on the next Business Day. Notice by email or facsimile transmission will be deemed received on the date the recipient confirms receipt either orally or in writing.

### **10.2 No Waiver or Prejudice of Rights**

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

### **10.3 Assignment**

Neither Party may assign this Agreement or its rights or obligations hereunder without the prior written consent of the other Party, such consent not to be unreasonably withheld..

### **10.4 Governing Law**

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

### **10.5 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties. Nothing in this Agreement may be construed to create any duty, standard of care, or liability to any Person not a Party to this Agreement.

### **10.6 Unenforceability or Invalidity**

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

### **10.7 Entire Agreement**

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

### **10.8 Taxes**

All present and future sales, use, excise, or other similar taxes imposed by any federal, state, municipal, or other taxing authority by reason of the payments arising under this Agreement by the Participating LSE (collectively, the "Taxes") will be the liability of the Participating LSE. The Participating LSE shall pay all Taxes to the applicable taxing authority as required or permitted by law. If any transaction is exempt from the payment of any such

Taxes, the Participating LSE will, if requested, provide DEO with valid tax exemption certificates. Should DEO be required to remit any Taxes directly to any applicable taxing authority, the Participating LSE will defend and indemnify DEO and will pay to DEO 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 reasonably request and shall otherwise fully cooperate with such other Party in connection with (i) any reporting of Taxes payable by the Participating LSE; (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 to minimize any Taxes payable.

#### **10.9 Rules of Interpretation**

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

(a) unless otherwise stated, the terms “include” and “including” when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;

(b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement, and shall be ignored in construing or interpreting the obligations of the Parties under this Agreement;

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

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

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

(f) this Agreement shall not be interpreted or construed to create an association, joint venture, or partnership among or between any of the Parties, or to impose any partnership obligation or liability upon any Party.

#### **10.10 Confidentiality**

(a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement or the FRR Integration Plan without consent of such Party; provided, however, that a Party may disclose such document or information without the consent of the other Party (i) if required by any federal, state, or local agency or by a court of competent jurisdiction, provided that the disclosing Party shall seek a protective order or other legal protection as is reasonably available under the circumstances to preserve the confidentiality of the document or information; (ii) to its directors, trustees, employees, representatives, agents, and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 10.10, and provided that in no event shall a document or information be disclosed in violation of the standard of conduct or other requirements established by FERC or any other regulator; (iii) if such document or information is

generally available to the public; or (iv) if such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal, or fiduciary obligation.

(b) Notwithstanding any other provision of this Section 10.10, either Party may disclose any document or information furnished by the other Party in connection with this Agreement without the consent of the other Party to (i) PJM or the PJM Market Monitor or (ii) to the extent required or that the disclosing Party deems appropriate before any regulatory agency or court (in which case the provision in Section 10.10(a)(i) shall apply).

(c) No Party, nor any of its employees or agents, will be responsible or liable to any other Party for any disclosure of data or information permitted under this Section 10.10.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 10.10. Each Party accordingly agrees that the other Party shall be entitled to equitable relief by way of injunction or otherwise if the Party breaches or threatens to breach its obligations under this Section 10.10, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

#### **10.11 Amendment**

This Agreement shall not be amended, modified, terminated, discharged, or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. The rates, terms, and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the

agreement of all Parties, the standard of review for changes to this Agreement proposed by a Party, a non-Party, or FERC acting sua sponte shall be the “public interest” standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and affirmed by Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington, 128 S. Ct. 2733 (2008).

#### **10.12 Agent**

DEO shall have the right at any time during the Term to appoint an agent to act on its behalf, to exercise or pursue any of its rights or remedies, and to perform any of its obligations or duties under this Agreement. Appointment by DEO of such an agent would not relieve DEO of any of its obligations under this Agreement except to the extent expressly consented to, in writing, by the Participating LSE.

#### **10.13 Further Assurances**

Each Party shall take such actions, and provide such documentation, as the other Party may reasonably request from time to time to ensure that it performs its obligations under this Agreement and the Resource Plan, if applicable.

#### **10.14 Counterparts**

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

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

**Duke Energy Ohio, Inc**

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

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

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

**[Participating LSE]**

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

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

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



**APPENDIX A<sup>2</sup>**

**PARTICIPATING LSE  
NOTICE INFORMATION**

Participating LSE

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Delivery Period: June 1, 2013 through May 31, 2014.

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. In the case of all Notices required under Article 5, if different from the contact information above:

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

copy to:

Name:  
Address:  
Telephone:

---

<sup>2</sup> Appendix A to be completed for each Participating LSE.

Facsimile:  
E-mail:

[PARTICIPATING LSE]

**BY:** \_\_\_\_\_  
**Name:**  
**Title:**

**APPENDIX B**

**FORM OF PARTICIPATING LSE STANDBY LETTER OF CREDIT**

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

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

To: Duke Energy Ohio, Inc. (the “Beneficiary”)

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

2. This Letter of Credit is issued at the request of the Applicant, and we hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions hereof, up to the maximum amount of this Letter of Credit, subject to reduction as provided in Paragraph 12 hereof. This Letter of Credit may be drawn in the event that (i) the Applicant fails to perform any obligation set forth in that certain Capacity Payment Agreement between the Applicant and you dated \_\_\_\_\_ (the “Agreement”), or any representation or warranty made by the Applicant in such Agreement is false or

\_\_\_\_\_ misleading in any material respect when made, or you receive

\_\_\_\_\_ notice from us that this Letter of Credit is being cancelled and the Applicant fails to

provide a substitute Letter of Credit from us or an alternative bank satisfying the requirements in such Agreement, or if our credit rating falls below the levels set forth in Paragraph 11 of this Letter of Credit and the Applicant fails to obtain a suitable Letter of Credit from another bank or other financial institution that meets the standards set out in such 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. (Eastern Prevailing Time<sup>1</sup>) on such Business Day to \_\_\_\_\_ (Bank), \_\_\_\_\_ (address), (i) a notice executed by you in the form of Annex 1 hereto, appropriately completed and duly signed by an Authorized Officer of 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. “Authorized Officer” shall mean President, Treasurer, any Vice President, any Assistant Treasurer or any other Person holding an equivalent title.
4. We may, but shall not be obligated to, accept any request to issue a substitute Letter of Credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new Letter of Credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute Letter of Credit for exchange, the new Letter of Credit shall be issued in the amount as set forth in the Availability Certificate.

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

5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. Eastern Prevailing Time on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (Eastern Prevailing Time) on a Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made after 11:00 A.M. (Eastern Prevailing Time) on any Business Day pursuant to Paragraph 3 herein above.
6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the

maximum amount available to be made hereunder; (ii) the date we issue a new Letter of Credit in exchange for this Letter of Credit in accordance with Paragraph 4 herein above; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to Beneficiary by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such other address of which prior written notice has been provided to us, that we elect not to renew this Letter of Credit for such additional one (1) year period.

8. As used herein:

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

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

9. This Letter of Credit is assignable and transferable, in accordance with Annex 6, to an entity certified by you to us in the form of Annex 6, and we hereby consent to such assignment or transfer, provided that this Letter of Credit may not otherwise be amended or modified without consent from us, you and the Applicant, and, except as otherwise expressly stated herein, is subject to the Uniform Customs and Practice for Documentary Credits - 2007 Revision, ICC Publication No. 600, or any successor publication thereto

(the “UCP”). Any and all transfer fees, expenses and costs shall be borne by the Applicant. This Letter of Credit shall, as to matters not governed by the UCP, be governed and construed in accordance with New York law, without regard to principles of conflicts of law.

10. This Letter of Credit sets forth in full our undertaking, and such undertaking shall not in any way be modified, amended, changed, amplified or limited by reference to any document, instrument or agreement referred to herein, except for Annexes 1 through 6 hereto and the notices referred to herein; and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except as set forth above.
11. We certify that as of \_\_\_\_\_ (date) we \_\_\_\_\_ (“Bank”) satisfy either the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or the senior unsecured debt rating of “A2” from Moody’s..
12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.
13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control 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 139 East 4th Street, Room EA 061, Cincinnati, OH 45202. The aggregate amount paid to the Beneficiary during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiary. Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of the Beneficiary.

Very truly yours,  
(Bank)

\_\_\_\_\_

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

Name:

Title:

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

Name:

Title:

**Annex 1 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$\_\_\_\_\_, in the event that the Applicant fails to perform any obligation set forth in that certain Agreement between the Applicant and us dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Agreement is false or misleading in any material respect when made, or due to our receipt from you of notice that the Letter of Credit is being cancelled and the Applicant has failed to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in such agreement, or due to a decline in your credit rating below the levels set forth in Paragraph 11 of the Letter of Credit and the Applicant has failed to obtain a substitute Letter of Credit from another bank or other financial institution that meets the standards in such agreement.
3. The amount to be received by [\_\_\_\_\_] is \$\_\_\_\_\_, for a total equal to the aggregate amount in the previous paragraph.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

Duke Energy Ohio, Inc.

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

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

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

Date: \_\_\_\_\_

**Annex 2 to Letter of Credit**

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

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

ON [Business Day set forth in Paragraph 5]

PAY TO:

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

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

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

(Bank)

(Address)

Duke Energy Ohio, Inc.

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

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

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

Date: \_\_\_\_\_

**Annex 3 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

[Beneficiary’s Addresses]

Very truly yours,

Duke Energy, Ohio, Inc.

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

Title:

Agreed and Accepted

(Bank)  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

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

**Annex 4 to Letter of Credit**

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

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

\_\_\_\_\_  
To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

Duke Energy Ohio, Inc.

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

Title:

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

**Annex 5 to Letter of Credit**

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

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

To [\_\_\_\_\_]:

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:

**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,

Duke Energy Ohio, Inc.

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

Title:

Date:

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

(Name of authenticating Party)

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

Name

Title

## APPENDIX C

### FORM OF PARTICIPATING LSE RESOURCE PLAN<sup>1</sup>

Delivery Period: [\_\_\_\_\_].

1. [Participating LSE] has elected to opt-out of the FRR Plan for the Delivery Period.
2. The Actual Opt-Out Amount for [Participating LSE's] load for the Delivery Period is [\_\_\_\_\_] MW/day.
3. [Participating LSE] will use the following Capacity Resources to satisfy the Actual Opt-Out Amount for the Delivery Period:
4. Capacity Resources and corresponding Megawatts of Capacity.<sup>2</sup>

*For each Generation Capacity Resource, provide the corresponding ICAP, EFORd, and resulting UCAP (which in the case of Generation equals ICAP \* (1 - EFORd)).*

*For the 2013-2014 Delivery Period, the EFORd provided for a generation resource in the Resource Plan must be either (1) the generation resource's EFORd calculated based on outage data for the 12 months ending September 30, 2009; or (2) the generation resource's 5 Year Average EFORd based on outage data for the 12 months ending September 30, 2009.; however, if the EFORd calculated based on outage data for the 12 months ending September 30, 2009 is greater than or equal to 0.25, the LSE may request that PJM recalculate the 5 Year Average EFORd excluding outage data for the October 1, 2008 through September 30, 2009 period and request that PJM use the recalculated 5 Year Average EFORd in the initial evaluation of their Resource Plan. The EFORd and EFORd-5 for the 12 months ending September 30, 2009 can be found in the EFORd at BRA and EFORd-5 at BRA columns on the EFORd screen for the 2013-2014 Delivery Period in the Resource Position section of eRPM. The EFORd that will be used by PJM in the final evaluation of the Resource Plan during the Delivery Period will be the generation resource's EFORd calculated based on outage data for the 12 months ending September 30<sup>th</sup> prior to the Delivery Period.*

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<sup>1</sup> Applicable only to a Participating LSE that elects to opt-out a portion of its Total Capacity Obligation.

<sup>2</sup> Each Capacity Resource name should match the name used for such Capacity Resource in PJM's eRPM system.

*For Demand Resources or Energy Efficiency Resources, provide Nominated Demand Resource/ Energy Efficiency Value and resulting UCAP (which in this case equals Nominated Value \* DR Factor\* Forecast Pool Requirement).*

*For the 2013-2014 Delivery Period, the DR Factor and Forecast Pool Requirement values that will be used in the initial evaluation of the Resource Plan are 0.957 and 1.0804, respectively. The final DR Factor and Forecast Pool Requirement values that will be used in the final evaluation of the Resource Plan during the Delivery Period are the DR Factor and Forecast Pool Requirement values that are posted with the planning parameters for the 2013-2014 Delivery Period Third Incremental Auction.*

5. If the Participating LSE is relying on Capacity Resources located within the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, the Participating LSE has obtained written confirmation from PJM that such Capacity Resource is deliverable to the PJM Balancing Authority throughout the Delivery Period.
6. If the Participating LSE is relying on Capacity Resources located outside the metered boundaries of the PJM Balancing Authority to meet the Actual Opt-Out Amount, the Participating LSE's intended ATC path to deliver its Capacity Resource to the metered boundaries of the PJM Balancing Authority is [\_\_\_\_\_].
7. [*Participating LSE*] hereby certifies that (i) everything in its Resource Plan is true and correct in all respects, (ii) it owns or has the contractual authority to control the Capacity or load reduction capability of any Capacity Resource listed in its Resource Plan, in an amount that is at least equal to the Actual Opt-Out Amount, and agrees not to transfer such ownership or contractual authority to another entity during the 2013-2014 Delivery Period without first providing replacement Capacity, (iii) it agrees to sign the Agreement with DEO for the 2013-2014 Delivery Period if it is authorized to opt-out of the Capacity procurement process by DEO, and (iv) prior to the commencement of the 2013-2014 Delivery Period, and throughout the 2013-2014 Delivery Period, the Participating LSE will be capable of delivering its external Capacity Resource(s) to the metered boundaries of the PJM Balancing Authority through firm point-to-point transmission service from the external unit to the border of PJM and generation deliverability has been demonstrated into PJM by either (x) firm point-to-point transmission service on the PJM OASIS or (y) Network External Designated Transmission Service.
8. Attached hereto is all other information requested by DEO, including information demonstrating that [*Participating LSE*] has procured Capacity and associated transmission service, in accordance with the PJM OATT, PJM Operating Agreement, PJM RAA and any PJM Manuals, necessary to satisfy the Actual Opt-Out Amount.

[LSE]

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

Name:

Title: