

**MASTER PERCENTAGE OF INCOME PAYMENT PLAN (“PIPP”)**

**SUPPLY AGREEMENT**

**BETWEEN**

**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**

**THE TOLEDO EDISON COMPANY**

**OHIO EDISON COMPANY**

**AND**

**THE PIPP SUPPLIER SET FORTH IN APPENDIX A HERETO**

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## MASTER PIPP SUPPLY AGREEMENT

**THIS MASTER PIPP SUPPLY AGREEMENT** (this “Agreement”) made and entered into this \_\_\_ day of \_\_\_\_\_, 20[ ] (the “Effective Date”) by and between The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company (collectively, the “Companies”), each of which is a corporation organized and existing under the laws of the State of Ohio, and the supplier listed on Appendix A (“PIPP Supplier”). The Companies and the PIPP Supplier are hereinafter sometimes referred to collectively as the “Parties,” or individually as a “Party.”

### WITNESSETH:

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

**WHEREAS**, the PUCO found that, commencing on and after June 1, 2016 it would serve the public interest for the Companies to secure PIPP Supply through a competitive bidding process; and

**WHEREAS**, on \_\_\_\_\_, 20[ ], the Companies conducted and completed a successful Solicitation for PIPP Supply; and

**WHEREAS**, the PIPP Supplier was the winning bidder in the Solicitation for the provision of PIPP Supply; and

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

**WHEREAS**, the PIPP Supplier will satisfy its Capacity obligations under the PJM Agreements associated with its respective PIPP Supplier Responsibility Share in

accordance with the terms and provisions of the PJM Agreements, including through participation in the base residual auction and incremental auctions administered by PJM; and

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

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

## **ARTICLE 1: DEFINITIONS**

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

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

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

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

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

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

**Billing Line Item Transfers** - “Billing Line Item Transfers” shall have the meaning ascribed to it in Section 2.3 (Firm Transmission Service and other Transmission Charges).

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

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

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

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

**Costs** mean, with respect to the Non-Defaulting Party, all reasonable attorney’s fees, brokerage fees, commissions, PJM charges and other similar transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which

it has hedged its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorney's fees and expenses incurred by the Non-Defaulting Party in connection with the termination of this Agreement as between the Companies and the applicable PIPP Supplier.

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

**CRES Supplier** means a Person that is duly certified by the PUCO to offer and to assume the contractual and legal responsibility to provide Standard Service Offer pursuant to retail open access programs, as well as PIPP Supply in accordance with Sections 4928.54 through 4928.544 of the Revised Code, as approved by the PUCO to Customers who are not Standard Service Offer Customers of the Companies.

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

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

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

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

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

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

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

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

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

**Emergency** means (i) an abnormal system condition requiring manual or automatic action to maintain system frequency, or to prevent loss of firm load, equipment damage, or tripping of system elements that could adversely affect the reliability of an electric system or the safety of persons or property; (ii) a condition that requires implementation of emergency operations procedures; or (iii) any other condition or situation that the Companies, transmission owner(s) or PJM deems imminently likely to endanger life or property or to affect or impair the Companies' electrical system or the electrical system(s) of other Person(s) to which the Companies' electrical system is directly or indirectly



connected (a “Connected Entity”). Such a condition or situation may include potential overloading of the Companies’ subtransmission or distribution circuits, PJM minimum generation (“light load”) conditions, or unusual operating conditions on either the Companies’ or a Connected Entity’s electrical system, or conditions such that the Companies are unable to accept Energy from the PIPP Supplier without jeopardizing the Companies’ electrical system or a Connected Entity’s electrical system.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Independent Credit Threshold** or **ICT** means an amount of credit, based on the creditworthiness of a PIPP Supplier or its Guarantor, if applicable, determined pursuant to Section 6.4, granted by the Companies to such PIPP Supplier to be applied towards the satisfaction of such PIPP Supplier's Independent Credit Requirement.

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

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

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

**Letter of Credit** means a standby irrevocable letter of credit acceptable to the Companies issued by a bank or other financial institution with a minimum "A" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from S&P or a minimum "A2" senior unsecured debt rating (or, if unavailable, corporate issuer rating) from Moody's, in substantially similar form as set forth in Appendix C and including all of the requirements specifically set forth in Section 6.9(b).

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

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

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

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

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

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

Section 8.1. The total Mark-to-Market Exposure Amount will be equal to the Mark-to-Market Exposure Amounts for each Billing Month during the Original Delivery Period starting from this Agreement's Effective Date, as applicable.

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

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

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

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

**Minimum Rating** means a minimum senior unsecured debt rating as defined in Section 6.6(a) of this Agreement.

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

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

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

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

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

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

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

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

**PIPP Customers** means Residential Customers taking PIPP Supply from the Companies during the Delivery Period.

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

**PIPP Service** means the Standard Service Offer service provided to PIPP Customers for PIPP Load by the Companies.

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

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

**PIPP Supply** means unbundled Energy, Capacity and Ancillary Services, including, to the extent not expressly assumed by the Companies pursuant to Section 2.3, all transmission

and distribution losses and congestion and imbalance costs associated with the provision of such services, as measured and reported to PJM, and such other services or products that a PIPP Supplier may be required to provide, by PJM or other Governmental Authority, in order to meet the requirements of PIPP Service.

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

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

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

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

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

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

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

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

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

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

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

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

**Residential Tariff** means Rate Schedule RS.

**Settlement Amount** means the net amount of the Losses or Gains, and Costs, expressed in U.S. Dollars, which the Non-Defaulting Party incurs as a result of Early Termination,

calculated from the Early Termination Date through the end of the Original Delivery Period. For purposes of calculating the Settlement Amount, the quantity of Energy (and other components of PIPP Supply) provided for under this Agreement for the period following the Early Termination Date through the remainder of the Original Delivery Period will be deemed to be those quantities that were delivered on an hourly basis, or would have been delivered on an hourly basis had this Agreement been in effect, during the previous calendar year, adjusted for any PIPP Load changes as may have occurred since the previous calendar year as determined by the Companies. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 5.2(b).

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

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

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

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

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

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

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

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

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

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

**UCC** means the Uniform Commercial Code.

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

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

The PIPP Supplier hereby agrees as follows:

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

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

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

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

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

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

The Companies shall be financially responsible for the provision of Firm Transmission Service from the Delivery Point. In addition, the Companies shall be responsible, at their sole cost and expense, and pursuant to PJM Agreements, for (i) charges and credits assessed under "Network Integration Transmission Service (NITS)",

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

For the period of time that this Agreement is in effect, both the Companies and PIPP Supplier agree that PJM Settlement, Inc. shall transfer the applicable billing line item charges and/or credits as designated between the Companies and the PIPP Supplier in Appendix F. The Companies will be responsible for initiating and/or maintaining Billing Line Item Transfers utilizing the PJM Billing Line Item Tool. PIPP Supplier agrees to confirm/approve Billing Line Item Transfers by the last business day of the month prior to

the Delivery Period of the Agreement.

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

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

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

The PIPP Supplier is responsible for any congestion costs incurred to supply its PIPP Supplier Responsibility Share.

#### **2.6 Record Retention**

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

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

#### **2.7 PJM E-Accounts**

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



## **2.8 Reliability Guidelines**

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

## **2.9 PJM Membership**

(a) The PIPP Supplier shall be at all times during the Delivery Period (i) a member in good standing of PJM; (ii) qualified by PJM as a “Market Buyer” and “Market Seller” pursuant to the PJM Agreements, and (iii) qualified as a PJM “Load Serving Entity.” During the Delivery Period, each of the Companies shall be a member in good standing of PJM.

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

## **2.10 Regulatory Authorizations**

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

(b) The PIPP Supplier shall cooperate in good faith with the Companies in any regulatory compliance efforts as may be required to maintain the ongoing legitimacy and enforceability of the terms of this Agreement and to fulfill any regulatory reporting

requirement associated with the provision of PIPP Supply before the PUCO, FERC or any other Governmental Authority.

### **2.11 Retail Distribution**

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

### **2.12 PJM Member Default Cost Allocation**

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

### **2.13 Status of PIPP Supplier**

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

### **2.14 Sales for Resale**

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

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

### **3.1 PIPP Supplier's Representations and Warranties**

The PIPP Supplier hereby represents and warrants to the Companies as follows:

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

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

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

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

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

(f) there are no pending, or to its knowledge threatened, actions, suits or proceedings against it or any of its Affiliates, or any legal proceedings before any

Governmental Authority that could reasonably be expected to adversely affect its ability to perform its obligations under this Agreement;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **3.3 Notice**

If a Party becomes aware that any of the representations, warranties, or covenants in this Agreement are no longer true during the Term, such Party must immediately notify the other Parties in accordance with the notice provisions of Section 13.1.

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

### **4.1 Term**

The term of this Agreement will commence upon the Effective Date and continue through the end of the Delivery Period (the “Term”); provided, however, that the provision of PIPP Supply by PIPP Supplier will commence on June 1, 2018 at 12:00:01 a.m. prevailing Eastern Time.

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

Termination of this Agreement, including Early Termination as between the Companies and a PIPP Supplier for any reason, shall not relieve the Companies or such PIPP Supplier of any obligation accruing on or prior to such termination. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive termination or expiration of this Agreement shall so survive, including Articles 5, 10, 11, 12 and 13 and Sections 2.6, 6.6, 6.9, 8.1(d) and (h), in accordance with the terms thereof.

#### **4.3 Mutual Termination**

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

#### **4.4 Early Termination**

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

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

### **5.1 Events of Default**

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

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

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

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

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

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

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



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

(h) the Defaulting Party becomes Bankrupt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) **Disputes With Respect to Default Damages or Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Default Damages or Termination Payment, in whole or in part, the Defaulting Party must, within three (3) Business Days of receipt of the Non-Defaulting Party's calculation of the Default

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

#### **5.4 Setoff of Payment Obligations of the Non-Defaulting Party**

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

#### **5.5 Preservation of Rights of Non-Defaulting Party**

The rights of the Non-Defaulting Party under this Agreement, including Sections 5.2, 5.3 and 5.4, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

## **ARTICLE 6: CREDITWORTHINESS; PERFORMANCE ASSURANCE**

### **6.1 Applicability**

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

### **6.2 Creditworthiness Determination**

The Companies will determine the creditworthiness of the PIPP Supplier or its Guarantor, if applicable, whether organized under the laws of the United States or organized under the laws of a foreign jurisdiction, based on its most recent senior unsecured debt rating (or, if unavailable, its corporate issuer rating). The Companies will have full discretion, without liability or recourse to such PIPP Supplier or its Guarantor, if applicable, to evaluate the evidence of creditworthiness submitted by such PIPP Supplier or Guarantor. The Companies may re-evaluate the creditworthiness of the PIPP Supplier or Guarantor from time to time, including whenever they become aware of an adverse change in such PIPP Supplier's or Guarantor's credit standing. In addition, the PIPP Supplier may petition the Companies to re-evaluate its creditworthiness whenever an event occurs that the PIPP Supplier reasonably believes would improve the determination made by the Companies of its or its Guarantor's creditworthiness. The Companies' credit re-evaluation must be completed as soon as practicable, but in no event longer than thirty (30)

days after receiving a fully documented request. The Companies shall provide the rationale for their determination of the credit limit and any resulting security requirement and such determination shall be deemed final and conclusive. The Companies shall perform their credit re-evaluation and associated security calculation in a non-discriminatory manner. The PIPP Supplier or its Guarantor shall provide unrestricted access to its audited financial statements; however, if audited financial statements are not available, the Companies may specify other types of financial statements that will be accepted. If the Companies determine in their sole discretion that they are unable to adequately assess the PIPP Supplier's or Guarantor's creditworthiness or the credit rating of the PIPP Supplier or its Guarantor is insufficient, such PIPP Supplier shall be required to post ICR Collateral in accordance with Section 6.4 and Margin Collateral in accordance with Section 6.7.

### **6.3 Independent Credit Requirement**

The Independent Credit Requirement ("ICR") per Tranche ("ICRT") that will be required of the PIPP Supplier under this Agreement will initially be \$1,800,000 per Tranche and will decline throughout the Term in accordance with the schedule set forth on Appendix B-1. The ICR under this Agreement for the PIPP Supplier is the ICRT times the number of Tranches shown in Appendix A.

### **6.4 Independent Credit Threshold**

The PIPP Supplier that qualifies under the following criteria will be granted an Independent Credit Threshold.

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



the PIPP Supplier must (1) be rated by at least one of the following rating agencies: Standard & Poor’s Rating Services (“S&P”), Moody’s Investors Service, Inc. (“Moody’s”) or Fitch, Inc. (“Fitch”), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) of at least “BB-“from S&P, “Ba3” from Moody’s or “BB-” from Fitch (a “Minimum Rating”). If the PIPP Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the PIPP Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the ICT will be determined based on the following table:

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

for a PIPP Supplier having a Guarantor, the Guarantor must (1) be rated by at least one of the following rating agencies: S&P, Moody’s, or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The

maximum level of the ICT that can be granted based on an ICT Guaranty will be determined based on the following table:

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

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

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

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

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

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

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

have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

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

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

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

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

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

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

## 6.6 Credit Limit

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

(a) for the PIPP Supplier to be granted a Credit Limit without delivering a Total Exposure Amount Guaranty or other performance assurances acceptable to the Companies, in the case of a PIPP Supplier organized under the laws of the United States, the PIPP Supplier must (1) be rated by at least one of the following rating agencies: Standard & Poor's Rating Services ("S&P"), Moody's Investors Service, Inc. ("Moody's") or Fitch, Inc. ("Fitch"), and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) of at least "BB-" from S&P, "Ba3" from Moody's or "BB-" from Fitch (a "Minimum Rating"). If the PIPP Supplier is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the PIPP Supplier is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount will be determined based on the following table:

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

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

(b) for PIPP Supplier delivering a Total Exposure Amount Guaranty, in the case of a Guarantor organized under the laws of the United States, the Guarantor providing the Total Exposure Amount Guaranty must (1) be rated by at least one of the following rating agencies: S&P, Moody's, or Fitch, and (2) have a minimum senior unsecured debt rating (or, if unavailable, corporate issuer rating) equal to the Minimum Rating. If the Guarantor is rated by only two rating agencies, and the ratings are split, the higher rating will be used. If the Guarantor is rated by three rating agencies, and the ratings are split, the lower of the two highest ratings will be used; provided that, in the event that the two highest ratings are common, such common rating will be used. The maximum level of the Credit Limit to cover the Total Exposure Amount that could be granted based on the Total Exposure Amount Guaranty will be determined based on the following table:

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

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

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

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

(d) The PIPP Supplier or any Guarantor of the PIPP Supplier, if applicable, that have not been organized under the laws of the United States must, in addition to all documentation required elsewhere in this Section 6.6, supply the following to the Companies:

(i) for the PIPP Supplier: (1) a legal opinion of counsel qualified to practice in the foreign jurisdiction in which the PIPP Supplier is organized that (A) the PIPP Supplier is duly incorporated and existing in such foreign jurisdiction; (B) this Agreement is the binding and enforceable obligation of the PIPP Supplier in such foreign jurisdiction and does not violate any local law or the PIPP Supplier's organizational or governing documents; and (C) all authorizations, approvals, consents, licenses, exemptions or other requirements of governmental, judicial or public bodies in such foreign jurisdiction have



been obtained, and all execution formalities have been duly completed, necessary for the enforcement and validity of the Agreement and the performance by the PIPP Supplier of its obligations hereunder; and (2) the sworn certificate of the corporate secretary (or similar officer) of such PIPP Supplier that the Person executing the Agreement on behalf of the PIPP Supplier has the authority to execute the Agreement and that the governing board of such PIPP Supplier has approved the execution of the Agreement. The Companies will have full discretion, without liability or recourse to the PIPP Supplier, to evaluate the sufficiency of the documents submitted by the PIPP Supplier; or

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

For a PIPP Supplier with a Total Exposure Amount Guaranty, the PIPP Supplier will be granted a Credit Limit up to the amount of the Total Exposure Amount Guaranty, but not exceeding the Credit Limit shown in the table above. The Total Exposure Amount Guaranty shall be provided to the Companies on or prior to the Effective Date, but may be modified in any amended or substitute Total Exposure Amount Guaranty provided to the Companies during the Term. The PIPP Supplier, however, may not increase or substitute its Total Exposure Amount Guaranty for the purpose of increasing its applicable Credit Limit during the time period after the Companies have made a demand of the PIPP Supplier to cover Margin (a “Margin Call”) but before the PIPP Supplier has provided the Companies with cash credited to a deposit account of the Companies or a Letter of Credit in accordance with Section 6.7, in each case in an amount equal to the Margin (the “Margin Collateral”). Notwithstanding anything herein to contrary, the PIPP Supplier may increase the limit of its Total Exposure Amount Guaranty after satisfying a Margin Call. Upon the Companies’ receipt of an amended or substitute Total Exposure Amount Guaranty increasing the limit of the Total Exposure Amount Guaranty, the PIPP Supplier may request a return of Margin Collateral in accordance with Section 6.7. The PIPP Suppliers will be required to post cash, letter of credit in an acceptable form as defined in Section 6.9(b) below (see standard format in Appendix C), or First Mortgage Bonds delivered or pledged as provided for in Section 6.9(c) below for the Margin due the Companies as set forth in Section 6.7 of this Agreement; or

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

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

If at any time and from time to time during the Delivery Period, Margin exists with respect to the PIPP Supplier, then the Companies on any Business Day may make a Margin Call of such PIPP Supplier; provided however that the Companies may not make a Margin Call unless the Margin exceeds the Minimum Margin Threshold. Upon receipt of a Margin Call, the applicable PIPP Supplier shall provide to the Companies Margin Collateral, which shall comprise of cash, a Letter of Credit, or First Mortgage Bonds delivered or pledged as provided for in Section 6.9(c) below. The Margin Collateral shall be in an amount equal to the Margin less the amount of any Margin Collateral already posted by the PIPP Supplier in which the Companies have a first priority, perfected security interest to secure the obligations of the PIPP Supplier under this Agreement and any Other PIPP Supply Agreement.

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

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

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

To secure its obligations under this Agreement, the PIPP Supplier hereby grants to the Companies a present and continuing security interest in, and lien on (and right of setoff against), its right, title and interest, whether now owned or hereafter acquired or arising, in (i) all deposit accounts in the name of any Company or partially in the name of any Company or held for the benefit of any Company and all funds credited to any and all of the foregoing, (ii) all securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered to and held by any Company (or its agents or custodians) and (iii) all proceeds (as defined in the UCC) of any and all of the foregoing. The PIPP Supplier agrees to take such action as reasonably required to create and perfect the Companies' first priority security interest in, and lien on (and right of setoff against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or at any time after the occurrence or deemed occurrence and during the continuation of an Event of Default where the PIPP Supplier is the Defaulting Party or an Early Termination Date (whether or not such PIPP Supplier was the Defaulting Party), the Companies may do any one or more of the following in any order: (i) exercise any of the rights and remedies of the Companies, including the right to set-off and liquidation, against any and all Margin Collateral or other collateral of such PIPP Supplier in the possession of the Companies, whether held in connection with this Agreement or any Other PIPP Supply Agreement, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such PIPP Supplier; (ii) draw on any outstanding Letter of Credit provided by such PIPP Supplier and (iii) exercise any and all rights remedies available to it under and against any First Mortgage Bonds delivered or pledged in accordance with Section

6.9(c). The Companies will apply the proceeds of the collateral realized upon the exercise of such rights or remedies to reduce such PIPP Supplier's obligation under this Agreement and under any Other PIPP Supply Agreement, and such PIPP Supplier shall remain liable for any amounts owing to the Companies after such application, subject to the Companies' obligation to return any surplus proceeds remaining after all such obligations are satisfied in full.

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

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

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

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

If the credit rating of a bank or other financial institution from which a PIPP Supplier has obtained a Letter of Credit falls below the levels set forth in the definition of “Letter of Credit”, the PIPP Supplier will immediately notify the Companies and, within one (1) Business Day of the failure of the financial institution to meet the required credit rating, obtain a suitable Letter of Credit from another bank or other financial institution that meets those standards, unless such period is extended in writing by Companies; or

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

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

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

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

#### **6.10 Reporting; Maintenance of Creditworthiness.**

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

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

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

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

#### **6.12 No Endorsement of PIPP Supplier**

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



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

**7.1 Scheduling**

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

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

**7.2 Load Forecasting**

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

**ARTICLE 8: BILLING AND SETTLEMENT**

**8.1 Companies Statement**

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

(a) for each Billing Month, the Companies will prepare and provide an invoice to the PIPP Supplier, which will show (i) amounts due to the PIPP Supplier equal to the Price multiplied by the PMEA, (ii) the PMEA/FMEA Adjustment from such Billing Month, if any, and (iii) all Charges due to the Companies incurred during the Billing Month (the "Statement"). The Companies will determine the total amount payable by one Party

to the other Party by netting the aggregate amounts due and owing to one Party against the aggregate amounts due and owing to the other Party, with the Party, if any, owing the greater aggregate amount paying the other Party the difference between the amounts owed. For any amounts due and owing the Companies, the Companies will specify in each Statement how the amounts will be allocated among the Companies. In the case of the PMEA/FMEA Adjustment, the allocation will be based on the respective PIPP Loads of the Companies.

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

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

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

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

(f) If a good faith dispute arises between the Companies and the PIPP Supplier regarding a Statement, the disputing Party shall be obligated to pay only the undisputed portion of the Statement, if any, and shall present the dispute in writing and submit supporting documentation to the non-disputing Party within one hundred twenty (120)

calendar days from the date of the Statement in dispute. Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 10. Upon resolution of a Statement dispute, any payments made to either Party will include simple interest on the payment at the lower of the Interest Index or six percent (6%) per annum payable from the date that notice of a Statement dispute was received by the non-disputing Party.

(g) If payment is made to the PIPP Supplier after the due date shown on the Statement, a late fee will be added to the unpaid balance until the entire Statement is paid. This late fee will be calculated at the prime rate J.P. Morgan Chase (or, if not available, another financial institution selected by the Companies) charges commercial borrowers.

(h) In the event of a good faith dispute regarding any Statement, the PIPP Supplier will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and records of the applicable Company. The right of verification will survive for one (1) year following the earlier of (i) the end of the Term or (ii) the Early Termination Date.

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

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

(a) The Companies and the PIPP Supplier shall direct PJM to invoice the Companies and such PIPP Supplier for PJM charges and credits relating to such PIPP Supplier's and the Companies' rights and obligations under this Agreement. If PJM is unable to invoice charges or credits in accordance with the foregoing sentence, the

Companies shall rectify such PJM invoice discrepancy in the Statement sent pursuant to Section 8.1.

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

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

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

## **ARTICLE 9: SYSTEM OPERATION**

### **9.1 Disconnection and Curtailment by the Companies**

Each of the Companies shall have the right, without incurring any liability to the PIPP Supplier, to disconnect (or otherwise curtail, interrupt or reduce deliveries from) the PIPP Supplier or to disconnect (or otherwise curtail, interrupt or reduce deliveries to) any Customer whenever one of the Companies determines in its discretion acting in good faith that such a disconnection, curtailment, interruption or reduction is necessary to facilitate construction, installation, maintenance, repair, replacement or inspection of any of the

Companies' facilities; or due to any other reason affecting the safe and reliable operation of any of the Companies' or a Customer's facilities, including Emergencies, forced outages or potential overloading of any of the Companies' transmission or distribution circuits, potential damage to any Customer's facilities or any risk of injury to persons, or when any of the Companies are directed by PJM. The Companies shall not show any preference for any entity affiliated with it in connection with any such disconnection, curtailment or reduction.

## **9.2 Loss of Service to PIPP Customers**

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

## **9.3 PJM Requirements**

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

reduction or full interruption of Customer load by either manual or automatic means.

#### **9.4 Compliance with Governmental Directives**

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

### **ARTICLE 10: DISPUTE RESOLUTION**

#### **10.1 Informal Resolution of Disputes**

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

provisions of Section 10.2. Any amounts that are owed by one Party to another Party as a result of resolution of a dispute pursuant to this Section 10.1 shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the Interest Index from the original due date through the date of payment.

### **10.2 Formal Dispute Resolution**

After the requirements of Section 10.1 have been satisfied, all disputes between the Parties, except where this Agreement requires otherwise, shall be submitted to an Ohio State court of competent jurisdiction or to a federal court of competent jurisdiction situated in the State of Ohio, which courts shall have exclusive jurisdiction to settle disputes arising under or related to this Agreement.

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

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

## **ARTICLE 11: LIMITATION OF LIABILITY; RISK OF LOSS**

### **11.1 Limitation of Liability**

Except to the extent expressly set forth in this Agreement, including Article 12, as between the Companies and the PIPP Supplier, each Party will be liable to the other for direct damages incurred as a result of such Party’s failure to comply with this Agreement

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

## **11.2 Risk of Loss**

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

## **ARTICLE 12: INDEMNIFICATION**

### **12.1 Indemnification**

(a) The PIPP Supplier must defend (at the Companies' option), indemnify and hold harmless the Companies, their shareholders, board members, directors, officers and employees, agents and attorneys from and against any and all third party (including PJM) claims or liabilities for losses, penalties, expenses, damage to property, injury to or death of any Person including a Party's employees or any third parties, that were caused by or



occur in connection with an act or omission of such PIPP Supplier with respect to an obligation arising under or in connection with this Agreement (including such PIPP Supplier's failure to submit payments to PJM pursuant to Section 8.2(b)), or for which such PIPP Supplier has otherwise assumed liability under the terms of this Agreement, except to the extent that a court of competent jurisdiction determines that the losses, penalties, expenses or damages were caused wholly or in part by the gross negligence or willful misconduct of any of the Companies. The Companies may, at their own expense, retain counsel and participate in the defense of any such suit or action.

(b) Intentionally left blank.

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

(d) If a Party intends to seek indemnification under Sections 12.1(a) or 12.1(b), as applicable, from any other Party, the Party seeking indemnification shall give the other Party notice of such claim within thirty (30) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. No Party may settle or compromise any

claim without the prior consent of the Companies (for an indemnification under Section 12.1(a)) or the Indemnified Parties involved (for an indemnification under Section 12.1(b)); provided, however, such consent shall not be unreasonably withheld or delayed.

## **ARTICLE 13: MISCELLANEOUS PROVISIONS**

### **13.1 Notices**

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

If to a PIPP Supplier:

Notification information for the PIPP Supplier is set forth on Appendix A.

If to the Company:

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

Eileen M. Mikkelsen  
Vice President, Rates & Regulatory Affairs  
FirstEnergy Service Company  
76 South Main Street, 8th Floor  
Akron, OH 44308  
Telephone: 330-384-5166  
Facsimile: 330-436-8018  
[mikkelsene@firstenergycorp.com](mailto:mikkelsene@firstenergycorp.com)

Copy to:

Bradley A. Bingaman  
Associate General Counsel  
FirstEnergy Service Company

76 South Main Street, 15<sup>th</sup> Floor  
Akron, OH 44308  
Telephone: 330-384-5947

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

Credit Risk Management  
FirstEnergy Service Company  
341 White Pond Drive, A-WAC-C2  
Akron, OH 44320  
Telephone: 330-315-6894  
Facsimile: 330-777-6582  
[margin@firstenergycorp.com](mailto:margin@firstenergycorp.com)

Copy to:

Eileen M. Mikkelsen  
Vice President, Rates & Regulatory Affairs  
FirstEnergy Service Company  
76 South Main Street, 8th Floor  
Akron, OH 44308  
Telephone: 330-384-5166  
Facsimile: 330-436-8018  
[mikkelsene@firstenergycorp.com](mailto:mikkelsene@firstenergycorp.com)

and:

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

and:

Bradley A. Bingaman  
Associate General Counsel  
FirstEnergy Service Company  
76 South Main Street, 15<sup>th</sup> Floor  
Akron, OH 44308  
Telephone: 330-384-5947

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

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

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

### **13.3 Assignment**

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

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

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

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

(b) In the case of an assignment pursuant to Section 13.3(a)(ii) and (iii) above, the Companies may assign their obligations under this Agreement and shall be relieved of such obligations upon the assignment and assumption of the assignee of such obligations and PIPP Supplier's receipt of notice thereof, except for such obligations of the Companies which have arisen prior to the date of the assignment.

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

#### **13.4 Governing Law**

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

### **13.5 Third Party Beneficiaries**

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

### **13.6 Unenforceability or Invalidity**

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

### **13.7 Entire Agreement**

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

### **13.8 Taxes**

All present and future federal, state, municipal or other taxes imposed by any taxing authority by reason of the provision of PIPP Supply by a PIPP Supplier under this Agreement (collectively, the "Taxes") will be the liability of the PIPP Supplier, except for Ohio sales and use taxes imposed under Ohio Rev. Code Ann. Tit. 57, Chapters 5739, 5740 and 5741 (the "Ohio Sales and Use Taxes"), which will be the Companies' responsibility.

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

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

### **13.9 Rules of Interpretation**

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

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

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

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

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

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

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

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



### **13.10 Confidentiality**

(a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement, unless (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law or it reasonably believes it is necessary or advisable to disclose such document or information in connection with any PUCO or FERC regulatory proceeding; (ii) such document or information is generally available to the public; or (iii) such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

(b) Notwithstanding any other provision of this Section 13.10, a Party may disclose to its employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 13.10, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC.

(c) The PIPP Supplier agrees that the PIPP Supplier's data and information submitted in the Solicitation will be disclosed if required by any federal, state or local agency (including the PUCO) or by a court of competent jurisdiction. However, the Companies will endeavor to notify the PIPP Supplier in advance of such disclosure. In any event, none of the Companies, nor any of their employees or agents, will be responsible to the PIPP Suppliers or any other party, or liable for any disclosure of such data or

information. Notwithstanding the above, the Companies reserve the right to use and communicate publicly to third parties any and all information and data submitted as part of the Solicitation in any proceedings before FERC, the PUCO, and any other regulatory body and the courts, if the Companies deem it necessary or advisable, without the prior consent of, or notice to, the PIPP Supplier.

(d) The Parties agree that monetary damages may be inadequate to compensate a Party for the other Party's breach of its obligations under this Section 13.10. Each Party accordingly agrees that the other Party shall be entitled to equitable relief, by way of injunction or otherwise, if the Party breaches or threatens to breach its obligations under this Section 13.10, which equitable relief shall be granted without bond or proof of damages, and the receiving Party shall not plead in defense that there would be an adequate remedy at law.

### **13.11 Amendment**

Except as provided in Section 13.12, this Agreement shall not be amended, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. Except as provided in Section 13.12, the rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and affirmed by Morgan Stanley Capital Group, Inc. v. Public Utility

District No. 1 of Snohomish County, Washington, et al., 554 U.S. \_\_\_\_, 128 S. Ct. 2733  
(June 26, 2008).

### **13.12 PJM Agreement Modifications**

(a) If the PJM Agreements are amended or modified so that any term, schedule or section reference herein to such agreements is changed, such term, schedule or section reference herein shall be deemed automatically (and without any further action by the Parties) to refer to the new term, schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.

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

### **13.13 Agent**

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

### **13.14 Counterparts**

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

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

THE TOLEDO EDISON COMPANY

OHIO EDISON COMPANY

By \_\_\_\_\_

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

Name:

Name:

Title:

Title:

THE CLEVELAND ELECTRIC  
ILLUMINATING COMPANY

By \_\_\_\_\_

Name:

Title:

[PIPP SUPPLIER SIGNATURE APPEARS ON SUCCEEDING PAGE]

**[PIPP SUPPLIER]**

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

Name:

Title:

**APPENDIX A**

**PIPP SUPPLIER RESPONSIBILITY SHARE**

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

Original Delivery Period: June 1, 20[\_\_\_], 12:00:01 A.M. through [\_\_\_\_\_].

Delivery Point – FEOHIO\_RESID\_AGG or any successor, superseding or amended name or location that may take effect from time to time.

Address for Notice:

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

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

copy to:

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

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

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

copy to:

Name:

Address:

Telephone:

Facsimile:

E-mail:

**[PIPP SUPPLIER]**

**BY:**

\_\_\_\_\_

**Name:**

**Title:**

## APPENDIX B-1

### SCHEDULE FOR ICRT

Month	12-Month Procurement (\$/tranche)
June 2018	\$1,800,000
July 2018	\$1,800,000
August 2018	\$1,200,000
September 2018	\$1,200,000
October 2018	\$1,200,000
November 2018	\$700,000
December 2018	\$700,000
January 2019	\$700,000
February 2019	\$400,000
March 2019	\$400,000
April 2019	\$200,000
May 2019	\$200,000



## APPENDIX B-2

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

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

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

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

The Forward Market Prices prevailing on the closing day of the Solicitation are used to establish the "mark" for each month during the Original Delivery Period. Table 1 contains hypothetical initial On-Peak Forward Market Prices for a 12-month Original Delivery Period from June 2018 through May 2019. The initial Off-Peak Forward Market Prices are determined by multiplying the On-Peak Forward Market Prices for each Billing Month in Table 1 by the ratios of off-peak to on-peak prices for each Billing Month in Table 2. Table 3 contains the hypothetical "marks" established on the day the Solicitation

is completed using the Forward Market Prices established in Tables 1 and 2. The "marks" will not change over the Original Delivery Period.

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

## MARK-TO-MARKET EXAMPLE

All Energy prices are based on a Market Price Hub

*Table 1 – Hypothetical Initial Market Price Data*

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

Month	Jun-18	Jul-18	Aug-18	Sep-18	Oct-18	Nov-18
On-Peak	\$46.39	\$56.39	\$56.39	\$44.56	\$40.90	\$44.03

Month	Dec-18	Jan-19	Feb-19	Mar-19	Apr-19	May-19
On-Peak	\$43.11	\$53.11	\$51.69	\$50.40	\$50.40	\$48.43

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

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

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

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

Hypothetical prices for June 2018 through May 2019 so as to correspond to a one-year Original Delivery Period.

	<b>On-Peak Volume</b>	<b>Off-Peak Volume</b>	<b>On-Peak Price</b>	<b>Off-Peak Price</b>
Jun-18	5,681	6,083	\$46.39	\$30.15
Jul-18	6,934	6,123	\$56.39	\$36.65
Aug-18	6,756	5,832	\$56.39	\$36.65
Sep-18	5,411	5,500	\$44.56	\$28.96
Oct-18	5,776	5,069	\$40.90	\$30.68
Nov-18	5,289	5,795	\$44.03	\$33.02
Dec-18	6,115	6,585	\$43.11	\$32.33
Jan-19	6,539	6,422	\$53.11	\$39.83
Feb-19	6,058	6,019	\$51.69	\$38.77
Mar-19	5,704	6,140	\$50.40	\$37.80
Apr-19	5,619	5,188	\$50.40	\$37.80
May-19	5,329	5,343	\$48.43	\$36.32

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

<b>Month</b>	<b>Jun-18</b>	<b>Jul-18</b>	<b>Aug-18</b>	<b>Sep-18</b>	<b>Oct-18</b>	<b>Nov-18</b>
On-Peak	\$46.39	\$57.39	\$56.39	\$46.56	\$40.90	\$45.03

  

<b>Month</b>	<b>Dec-18</b>	<b>Jan-19</b>	<b>Feb-19</b>	<b>Mar-19</b>	<b>Apr-19</b>	<b>May-19</b>
On-Peak	\$43.11	\$53.11	\$51.69	\$50.40	\$50.40	\$48.43

**Table 5 – MtM on Day 1 of the Delivery Period**

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

Data for June 2018 through May 2019 so as to correspond to a one-year Original Delivery Period

	On-Peak Load per Tranche (MWh)	Off-Peak Load per Tranche (MWh)	Mark for On-Peak Prices	Current Day 1 On-Peak Prices	Change in On-Peak Price	Change in Off-Peak Price	MtM
Jun-18	5,681	6,083	\$46.39	\$46.39	\$-	\$-	\$-
Jul-18	6,934	6,123	\$56.39	\$57.39	\$1.00	\$0.65	\$10,914
Aug-18	6,756	5,832	\$56.39	\$56.39	\$-	\$-	
Sep-18	5,411	5,500	\$44.56	\$46.56	\$2.00	\$1.30	\$17,972
Oct-18	5,776	5,069	\$40.90	\$40.90	\$-	\$-	
Nov-18	5,289	5,795	\$44.03	\$45.03	\$1.00	\$0.75	\$ 9,635
Dec-18	6,115	6,585	\$43.11	\$43.11	\$-	\$-	
Jan-19	6,539	6,422	\$53.11	\$53.11	\$-	\$-	
Feb-19	6,058	6,019	\$51.69	\$51.69	\$-	\$-	
Mar-19	5,704	6,140	\$50.40	\$50.40	\$-	\$-	
Apr-19	5,619	5,188	\$50.40	\$50.40	\$-	\$-	
May-19	5,329	5,343	\$48.43	\$48.43	\$-	\$-	
						<b>Total</b>	<b>\$ 38,521</b>

**APPENDIX C**

**FORM OF PIPP SUPPLIER LETTER OF CREDIT**

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

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

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

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

(prevailing Eastern Time<sup>1</sup>) on such Business Day to \_\_\_\_\_  
(Bank), \_\_\_\_\_ (address), (i) a notice executed by  
you in the form of Annex 1 hereto, appropriately completed and duly signed by an  
Authorized Officer of each of the Beneficiaries and (ii) your draft in the form of Annex  
2 hereto, appropriately completed and duly signed by an Authorized Officer of each of  
the Beneficiaries. "Authorized Officer" shall mean President, Treasurer, any Vice  
President, any Assistant Treasurer or any other person holding an equivalent title.

4. We may, but shall not be obligated to, accept any request to issue a substitute letter of credit. Such request shall be in an Availability Certificate in the form of Annex 3 hereto by you to us for exchange for a new letter of credit in the amount set forth in an Availability Certificate, which amount shall not exceed the present value of this Letter of Credit. Upon acceptance by us of any such request to issue a substitute letter of credit for exchange, the new letter of credit shall be issued in the amount as set forth in the Availability Certificate.
5. We hereby agree to honor a drawing hereunder made in compliance with the terms and provisions of this Letter of Credit by transferring in immediately available funds the amount specified in the draft delivered to us in connection with such drawing to such account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. prevailing Eastern Time on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (prevailing Eastern time) on a business day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such

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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.

drawing if delivery of the requisite document is made after 11:00 A.M. (prevailing Eastern time) on any Business Day pursuant to Paragraph 3 herein above.

6. If a demand for payment made by you hereunder does not, in any instance, conform to the terms and conditions of this Letter of Credit, we shall give you prompt notice (not later than three (3) Business Days following the date of receipt of the documents) that the demand for payment was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reasons therefore and that we will upon your instructions hold any documents at your disposal or return the same to you. Upon being notified that the demand for payment was not effected in conformity with this Letter of Credit, you may attempt to correct any such non-conforming demand for payment to the extent that you are entitled to do so, provided, however, that in such event a conforming demand for payment must be timely made in accordance with the terms of this Letter of Credit.
7. This Letter of Credit will automatically terminate and be delivered to us for cancellation on the earliest of (i) the making by you of the drawings in an amount equal to the maximum amount available to be made hereunder; (ii) the date we issue a new letter of credit in exchange for this Letter of Credit in accordance with paragraph 4 herein above; and (iii) the date we receive from you a Certificate of Expiration in the form of Annex 4 hereto. The Letter of Credit will be automatically extended without written amendment for successive additional one- (1) year periods from the current or any future extended expiry date, unless at least ninety (90) days prior to such date of expiration, we give written notice to Beneficiaries by registered or certified mail, return receipt requested, or by overnight courier, at the address set forth above, or at such



other address of which prior written notice has been provided to us, that we elect not to renew this irrevocable standby Letter of Credit for such additional one (1) year period.

8. As used herein:

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

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

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

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

to incorporate herein by reference any document, instrument or agreement except as set forth above.

11. We certify that as of \_\_\_\_\_(date) we \_\_\_\_\_ (“Bank”) satisfy either the senior unsecured debt rating of “A” from Standard & Poor’s Rating Service or the senior unsecured debt rating of “A2” from Moody’s Rating Service.
12. The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through us referencing this Letter of Credit No. \_\_\_\_\_. Partial drawings are permitted hereunder.
13. Faxed document(s) are acceptable. Presentation by fax must be made to fax number \_\_\_\_\_ confirmed by telephone to \_\_\_\_\_.
14. In the event of act of God, riot, civil commotion, insurrection, war, terrorism or any strikes or lock outs, or any cause beyond our control, that interrupts our business, and causes the place for presentation of this letter of credit to be closed for business on the last day of presentation, the expiration date of this letter of credit shall be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.
15. This original letter of credit has been sent to the Beneficiaries located at \_\_\_\_\_ above (as per Applicant’s instructions). The aggregate amount paid to the Companies during the validity of this Letter of Credit will not exceed the amount of this Letter of Credit. Any demands or communications in the form of the attached Annexes (except for Annex 5) or other communications directed to us under this Letter of Credit must be signed by an Authorized Officer of the Beneficiaries.

Acceptance or rejection of any amendments to this Letter of Credit or any extensions pursuant to Annex 5 must be signed by an Authorized Officer of each of the Beneficiaries.

Very truly yours,  
(Bank)

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

Name:

Title:

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

Name:

Title:

**Annex 1 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

1. Capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Letter of Credit.
2. Pursuant to Paragraph 2 of the Letter of Credit No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, the undersigned is entitled to make a drawing under the Letter of Credit in the aggregate amount of \$ \_\_\_\_\_, due to an Event of Default under any Master PIPP Supply Agreement between the Applicant and us.
3. The amount to be received by The Cleveland Electric Illuminating Company is \$ \_\_\_\_\_, the amount to be received by The Toledo Edison Company is \$ \_\_\_\_\_ and the amount to be received by The Ohio Edison Company is \$ \_\_\_\_\_, for a total equal to the aggregate amount in the previous paragraph.
4. We acknowledge that, upon your honoring the drawing herein requested, the amount of the Letter of Credit available for drawing shall be automatically decreased by an amount equal to this drawing.

Very truly yours,

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

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

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

**Annex 2 to Letter of Credit**

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

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

ON [Business Day set forth in Paragraph 5]

PAY TO:           The Cleveland Electric Illuminating Company

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

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

PAY TO:           The Toledo Edison Company

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

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

PAY TO:           Ohio Edison Company

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

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

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

(Bank)  
(Address)

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

**Annex 3 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

[Beneficiaries'  
Addresses]

Very truly yours,

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

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

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

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

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

**Annex 4 to Letter of Credit**

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

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

To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

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

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

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

**Annex 5 to Letter of Credit**

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

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

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

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

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

Very truly yours,

BANK \_\_\_\_\_

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

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

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

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

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



**Annex 6 to Letter of Credit**

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

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

To:

[Bank]

[Bank Address]

To Whom It May Concern:

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

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

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

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

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

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

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

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

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

Very Truly Yours,

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

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

(Name of authenticating party)

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

Name

Title

## APPENDIX D

### FORM OF GUARANTY

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

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

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

bankruptcy of the PIPP Supplier, and any right to require a proceeding first against the PIPP Supplier.

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

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

If to the Guarantor:  
[To be completed]

If to the Guaranteed Parties:

Credit Risk Management  
FirstEnergy Service Company  
341 White Pond Drive, A-WAC-C2  
Akron, OH 44320  
Telephone: 330-315-6894  
Facsimile: 330-777-6582  
[margin@firstenergycorp.com](mailto:margin@firstenergycorp.com)

Copy to:

Eileen M. Mikkelsen  
Vice President, Rates & Regulatory Affairs  
FirstEnergy Service Company  
76 South Main Street, 8th Floor  
Akron, OH 44308  
Telephone: 330-384-5166  
Facsimile: 330-436-8018  
[mikkelsene@firstenergycorp.com](mailto:mikkelsene@firstenergycorp.com)

and:

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

and:

Bradley A. Bingaman  
Associate General Counsel  
FirstEnergy Corp.  
76 South Main Street, 15<sup>th</sup> Floor  
Akron, OH 44308  
Telephone: 330-384-5947

12. If claim is ever made upon the Guaranteed Parties for repayment or recovery of any amount or amounts received in payment or on account of any of the Guaranteed

Obligations and the Guaranteed Parties repay all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over such payee or any of its property, or (ii) any settlement or compromise of any such claim effected by such payee with any such claimant (including the Guarantor), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Agreement or other instrument evidencing any liability of the Guarantor, and the Guarantor shall be and remain liable to the Guaranteed Parties hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by any such payee.

13. The Guarantor hereby certifies that it satisfies the Minimum Rating as defined in the Agreement.
14. This Guaranty shall remain in full force and effect until all Guaranteed Obligations have been fully and finally performed, at which point it will expire. The Guarantor may terminate this Guaranty upon thirty (30) days prior written notice to the Guaranteed Parties, which termination shall be effective only upon receipt by the Guaranteed Parties of alternative means of security or credit support, as specified in the Agreement and in a form reasonably acceptable to the Guaranteed Parties. Upon the effectiveness of any such expiration or termination, the Guarantor shall have no further liability under this Guaranty, except with respect to the Guaranteed Obligations entered into prior to the time the expiration or termination is effective, which Guaranteed Obligations shall remain guaranteed pursuant to the terms of this Guaranty until finally and fully performed.
15. The Guarantor represents and warrants that: (i) it is duly organized and validly existing under the laws of the jurisdiction in which it was organized and has the power and authority to execute, deliver, and perform this Guaranty; (ii) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over the Guarantor is required on the part of the Guarantor for the execution, delivery and performance of this Guaranty except for those already made or obtained; (iii) this Guaranty constitutes a valid and legally binding agreement of the Guarantor, and is enforceable against the Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity; and (iv) the execution, delivery and performance of this Guaranty by the Guarantor have been and remain duly authorized by all necessary corporate or comparable action and do not contravene any provision of its \_\_\_\_\_ [*insert appropriate corporate organizational document, such as Declaration of Trust, Limited Liability Agreement, Articles of Incorporation or by-laws*] or any law, regulation or contractual restriction binding on it or its assets.
16. This Guaranty and the rights and obligations of the PIPP Supplier and the Guarantor hereunder shall be construed in accordance with and governed by the laws of the State of Ohio. The Guarantor and Guaranteed Parties agree to the exclusive jurisdiction of

State and federal courts located in the State of Ohio over any disputes arising from or relating to this Guaranty and waive any objections to venue or inconvenient forum. The Guarantor and Guaranteed Parties each hereby irrevocably waive any and all rights to trial by jury with respect to any legal proceeding arising out of or relating to this Guaranty.

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

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

[GUARANTOR]

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



Accepted and Agreed to:

The Cleveland Electric Illuminating Company

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

Name:

Title:

Date:

The Toledo Edison Company

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

Name:

Title:

Date:

Ohio Edison Company

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

Name:

Title:

Date:

**APPENDIX E**

**[Reserved]**

**APPENDIX F**

**SAMPLE PJM INVOICE**

<b>PJM Billing Line Items (as of July 7, 2014)</b>					
<b>ID #</b>	<b>Resp.</b>	<b>CHARGES</b>	<b>ID #</b>	<b>Resp.</b>	<b>CREDITS</b>
1000	PIPP S	Amount Due for Interest on Past Due Charges			
1100	EDC	Network Integration Transmission Service	2100	EDC	Network Integration Transmission Service
1101	EDC	Network Integration Transmission Service (ATSI Low Voltage)	2101	EDC	Network Integration Transmission Service (ATSI Low Voltage)
1104	EDC	Network Integration Transmission Service Offset	2104	EDC	Network Integration Transmission Service Offset
			2106	PIPP S	Non-Zone Network Integration Transmission Service
1108	EDC	Transmission Enhancement	2108	EDC	Transmission Enhancement
1109	EDC	MTEP Project Cost Recovery	2109	EDC	MTEP Project Cost Recovery
1110	PIPP S	Direct Assignment Facilities	2110	PIPP S	Direct Assignment Facilities
1120	PIPP S	Other Supporting Facilities	2120	PIPP S	Other Supporting Facilities
1130	PIPP S	Firm Point-to-Point Transmission Service	2130	PIPP S	Firm Point-to-Point Transmission Service
			2132	PIPP S	Internal Firm Point-to-Point Transmission Service
1133	PIPP S	Firm Point-to-Point Transmission Service Resale	2133	PIPP S	Firm Point-to-Point Transmission Service Resale
1135	PIPP S	Neptune Voluntary Released Transmission Service (Firm)	2135	PIPP S	Neptune Voluntary Released Transmission Service (Firm)
1138	PIPP S	Linden Voluntary Released Transmission Service (Firm)	2138	PIPP S	Linden Voluntary Released Transmission Service (Firm)
1140	PIPP S	Non-Firm Point-to-Point Transmission Service	2140	PIPP S	Non-Firm Point-to-Point Transmission Service
			2142	PIPP S	Internal Non-Firm Point-to-Point Transmission Service
1143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale	2143	PIPP S	Non-Firm Point-to-Point Transmission Service Resale
1145	PIPP S	Neptune Voluntary Released Transmission Service (Non-Firm)	2145	PIPP S	Neptune Voluntary Released Transmission Service (Non-Firm)
1146	PIPP S	Neptune Default Released Transmission Service (Non-Firm)	2146	PIPP S	Neptune Default Released Transmission Service (Non-Firm)
1147	PIPP S	Neptune Unscheduled Usage Billing Allocation			
1155	PIPP S	Linden Voluntary Released Transmission Service (Non-Firm)	2155	PIPP S	Linden Voluntary Released Transmission Service (Non-Firm)

1156	PIPP S	Linden Default Released Transmission Service (Non-Firm)	2156	PIPP S	Linden Default Released Transmission Service (Non-Firm)
1157	PIPP S	Linden Unscheduled Usage Billing Allocation			
1200	PIPP S	Day-ahead Spot Market Energy			
1205	PIPP S	Balancing Spot Market Energy			
1210	PIPP S	Day-ahead Transmission Congestion	2210	PIPP S	Transmission Congestion
1215	PIPP S	Balancing Transmission Congestion			
			2217	PIPP S	Planning Period Excess Congestion
1218	EDC	Planning Period Congestion Uplift	2218	EDC	Planning Period Congestion Uplift
1220	PIPP S	Day-ahead Transmission Losses	2220	PIPP S	Transmission Losses
1225	PIPP S	Balancing Transmission Losses			
1230	PIPP S	Inadvertent Interchange			
1240	PIPP S	Day-ahead Economic Load Response	2240	PIPP S	Day-ahead Economic Load Response
1241	PIPP S	Real-time Economic Load Response	2241	PIPP S	Real-time Economic Load Response
1242	PIPP S	Day-Ahead Load Response Charge Allocation			
1243	PIPP S	Real-Time Load Response Charge Allocation			
1245	PIPP S	Emergency Load Response	2245	PIPP S	Emergency Load Response
1250	EDC	Meter Error Correction			
1260	EDC	Emergency Energy	2260	EDC	Emergency Energy
1301	PIPP S	PJM Scheduling, System Control and Dispatch Service - Control Area Administration			
1302	PIPP S	PJM Scheduling, System Control and Dispatch Service - FTR Administration			
1303	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support			
1304	PIPP S	PJM Scheduling, System Control and Dispatch Service - Regulation Market Administration			
1305	PIPP S	PJM Scheduling, System Control and Dispatch Service - Capacity Resource/Obligation Mgmt.			
1306	PIPP S	PJM Scheduling, System Control and Dispatch Service - Advanced Second Control Center			
1307	PIPP S	PJM Scheduling, System Control and Dispatch Service - Market Support Offset			

1308	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Control Area Administration			
1309	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - FTR Administration			
1310	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Market Support			
1311	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Regulation Market Administration			
1312	PIPP S	PJM Scheduling, System Control and Dispatch Service Refund - Capacity Resource/Obligation Mgmt.			
1313	PIPP S	PJM Settlement, Inc.			
1314	PIPP S	Market Monitoring Unit (MMU) Funding			
1315	PIPP S	FERC Annual Charge Recovery			
1316	PIPP S	Organization of PJM States, Inc. (OPSI) Funding			
1317	PIPP S	North American Electric Reliability Corporation (NERC)			
1318	PIPP S	Reliability First Corporation (RFC)			
1320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service	2320	EDC	Transmission Owner Scheduling, System Control and Dispatch Service
1330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service	2330	EDC	Reactive Supply and Voltage Control from Generation and Other Sources Service
1340	PIPP S	Regulation and Frequency Response Service	2340	PIPP S	Regulation and Frequency Response Service
1350	PIPP S	Energy Imbalance Service	2350	PIPP S	Energy Imbalance Service
1360	PIPP S	Synchronized Reserve	2360	PIPP S	Synchronized Reserve
1362	PIPP S	Non-Synchronized Reserve	2362	PIPP S	Non-Synchronized Reserve
1365	PIPP S	Day-ahead Scheduling Reserve	2365	PIPP S	Day-ahead Scheduling Reserve
1370	PIPP S	Day-ahead Operating Reserve	2370	PIPP S	Day-ahead Operating Reserve
1371	PIPP S	Day-ahead Operating Reserve for Load Response	2371	PIPP S	Day-ahead Operating Reserve for Load Response
1375	EDC	Balancing Operating Reserve	2375	EDC	Balancing Operating Reserve
1376	EDC	Balancing Operating Reserve for Load Response	2376	EDC	Balancing Operating Reserve for Load Response
1377	PIPP S	Synchronous Condensing	2377	PIPP S	Synchronous Condensing
1378	EDC	Reactive Services	2378	EDC	Reactive Services
1380	PIPP S	Black Start Service	2380	PIPP S	Black Start Service
1400	PIPP S	Load Reconciliation for Spot Market Energy			

1410	PIPP S	Load Reconciliation for Transmission Congestion			
1420	PIPP S	Load Reconciliation for Transmission Losses	2420	PIPP S	Load Reconciliation for Transmission Losses
1430	PIPP S	Load Reconciliation for Inadvertent Interchange			
1440	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service			
1441	PIPP S	Load Reconciliation for PJM Scheduling, System Control and Dispatch Service Refund			
1442	PIPP S	Load Reconciliation for Schedule 9-6 - Advanced Second Control Center			
1444	PIPP S	Load Reconciliation for Market Monitoring Unit (MMU) Funding			
1445	PIPP S	Load Reconciliation for FERC Annual Charge Recovery			
1446	PIPP S	Load Reconciliation for Organization of PJM States, Inc. (OPSI) Funding			
1447	PIPP S	Load Reconciliation for North American Electric Reliability Corporation (NERC)			
1448	PIPP S	Load Reconciliation for Reliability First Corporation (RFC)			
1450	EDC	Load Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service			
1460	PIPP S	Load Reconciliation for Regulation and Frequency Response Service			
1470	PIPP S	Load Reconciliation for Synchronized Reserve			
1472	PIPP S	Load Reconciliation for Non-Synchronized Reserve			
1475	PIPP S	Load Reconciliation for Day-ahead Scheduling Reserve			
1478	PIPP S	Load Reconciliation for Balancing Operating Reserve			
1480	PIPP S	Load Reconciliation for Synchronous Condensing			
1490	PIPP S	Load Reconciliation for Reactive Services			
1500	PIPP S	Financial Transmission Rights Auction	2500	PIPP S	Financial Transmission Rights Auction
			2510	PIPP S	Auction Revenue Rights
1600	PIPP S	RPM Auction	2600	PIPP S	RPM Auction
1610	PIPP S	Locational Reliability			
			2620	PIPP S	Interruptible Load for Reliability
			2630	PIPP S	Capacity Transfer Rights

			2640	PIPP S	Incremental Capacity Transfer Rights
1650	PIPP S	Auction Specific MW Capacity Transaction	2650	PIPP S	Auction Specific MW Capacity Transaction
1660	PIPP S	Demand Resource and ILR Compliance Penalty	2660	PIPP S	Demand Resource and ILR Compliance Penalty
1661	PIPP S	Capacity Resource Deficiency	2661	PIPP S	Capacity Resource Deficiency
1662	PIPP S	Generation Resource Rating Test Failure	2662	PIPP S	Generation Resource Rating Test Failure
1663	PIPP S	Qualifying Transmission Upgrade Compliance Penalty	2663	PIPP S	Qualifying Transmission Upgrade Compliance Penalty
1664	PIPP S	Peak Season Maintenance Compliance Penalty	2664	PIPP S	Peak Season Maintenance Compliance Penalty
1665	PIPP S	Peak-Hour Period Availability	2665	PIPP S	Peak-Hour Period Availability
1666	PIPP S	Load Management Test Failure	2666	PIPP S	Load Management Test Failure
1670	PIPP S	FRR LSE Reliability	2670	PIPP S	FRR LSE Reliability
1680	PIPP S	FRR LSE Demand Resource and ILR Compliance Penalty	2680	PIPP S	FRR LSE Demand Resource and ILR Compliance Penalty
1681	PIPP S	FRR LSE Capacity Resource Deficiency	2681	PIPP S	FRR LSE Capacity Resource Deficiency
1682	PIPP S	FRR LSE Generation Resource Rating Test Failure	2682	PIPP S	FRR LSE Generation Resource Rating Test Failure
1683	PIPP S	FRR LSE Qualifying Transmission Upgrade Compliance Penalty	2683	PIPP S	FRR LSE Qualifying Transmission Upgrade Compliance Penalty
1684	PIPP S	FRR LSE Peak Season Maintenance Compliance Penalty	2684	PIPP S	FRR LSE Peak Season Maintenance Compliance Penalty
1685	PIPP S	FRR LSE Peak-Hour Period Availability	2685	PIPP S	FRR LSE Peak-Hour Period Availability
1686	PIPP S	FRR LSE Load Management Test Failure	2686	PIPP S	FRR LSE Load Management Test Failure
1687	PIPP S	FRR LSE Schedule 9-5	2687	PIPP S	FRR LSE Schedule 9-5
1688	PIPP S	FRR LSE Schedule 9-6	2688	PIPP S	FRR LSE Schedule 9-6
1710	PIPP S	PJM/MISO Seams Elimination Cost Assignment	2710	PIPP S	PJM/MISO Seams Elimination Cost Assignment
1712	PIPP S	Intra-PJM Seams Elimination Cost Assignment	2712	PIPP S	Intra-PJM Seams Elimination Cost Assignment
1720	PIPP S	RTO Start-up Cost Recovery	2720	PIPP S	RTO Start-up Cost Recovery
1730	PIPP S	Expansion Cost Recovery	2730	PIPP S	Expansion Cost Recovery
1900	PIPP S	Unscheduled Transmission Service			
1910	PIPP S	Ramapo Phase Angle Regulators	2910	PIPP S	Ramapo Phase Angle Regulators
1911	PIPP S	Michigan - Ontario Interface Phase Angle Regulators			
			2912	PIPP S	CT Lost Opportunity Cost Allocation
1920	PIPP S	Station Power			
1930	EDC	Generation Deactivation	2930	EDC	Generation Deactivation
1932	EDC	Generation Deactivation Refund	2932	EDC	Generation Deactivation Refund
1950	PIPP S	Virginia Retail Administrative Fee	2950	PIPP S	Virginia Retail Administrative Fee

1952	PIPP S	Deferred Tax Adjustment	2952	PIPP S	Deferred Tax Adjustment
1955	PIPP S	Deferral Recovery	2955	PIPP S	Deferral Recovery
1980	PIPP S	Miscellaneous Bilateral	2980	PIPP S	Miscellaneous Bilateral
1995	PIPP S	PJM Annual Membership Fee			
			2996	PIPP S	Annual PJM Cell Tower
			2997	PIPP S	Annual PJM Building Rent
1999	PIPP S	PJM Customer Payment Default			



## APPENDIX G

### FIRST MORTGAGE BONDS

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

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

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

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