

**ATSI UTILITIES**  
**FRR PROGRAM FOR 2011-12 AND 2012-13 DELIVERY YEARS**  
**FERC DOCKET NO. ER09-1589**

**CAPACITY PAYMENT AGREEMENT**  
**BETWEEN**  
**THE CLEVELAND ELECTRIC ILLUMINATING COMPANY**  
**THE TOLEDO EDISON COMPANY**  
**OHIO EDISON COMPANY**  
**PENNSYLVANIA POWER COMPANY**  
**AND**  
**EACH PARTICIPATING LOAD SERVING ENTITY**  
**SET FORTH ON APPENDIX A HERETO**

**2011-2012 DELIVERY YEAR<sup>1</sup>**

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<sup>1</sup> A Capacity Payment Agreement for the 2012-2013 Delivery Year will also be created based on this Agreement.

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## **CAPACITY PAYMENT AGREEMENT**

**THIS CAPACITY PAYMENT AGREEMENT** (the “Agreement”) made and entered into this \_\_\_ day of \_\_\_\_\_, 2010 (the “Effective Date”) by and between The Cleveland Electric Illuminating Company, The Toledo Edison Company and Ohio Edison Company, each of which is a corporation organized and existing under the laws of the State of Ohio, and Pennsylvania Power Company, a corporation organized and existing under the laws of the State of Pennsylvania (collectively, the “ATSI Utilities”), and each of the Load Serving Entities listed on Appendix A, who shall bear their obligations hereunder severally, but not jointly (each a “Participating LSE” and, collectively, the “Participating LSEs”). The ATSI Utilities and each Participating LSE are hereinafter sometimes referred to collectively as the “Parties,” or individually as a “Party.”

### WITNESSETH:

**WHEREAS**, pursuant to FERC’s Order Addressing RTO Realignment Request and Complaint (the “Realignment Order”) in Docket No. ER09-1589, dated as of December 17, 2009, the ATSI Load Zone will be integrated into the PJM Balancing Authority effective as of June 1, 2011; and

**WHEREAS**, subject to and in reliance on the terms hereof, the ATSI Utilities are willing to procure and manage the Capacity necessary to satisfy each Participating LSE’s Capacity Obligation during the Delivery Period; and

**WHEREAS**, each Participating LSE will pay the ATSI Utilities’ costs to procure and manage the Capacity necessary to cover such LSE’s Capacity Obligation for the Delivery Period; and

**WHEREAS**, the ATSI Utilities and the Participating LSEs desire to enter into this Agreement setting forth their respective obligations; and

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

## **ARTICLE 1: DEFINITIONS**

Capitalized or abbreviated terms not defined in this Article 1 or elsewhere in this Agreement will have the definitions set forth in the PJM Agreements. To the extent the definitions in the PJM Agreements conflict, the definitions to be used herein shall be from first, the PJM RAA, second, the PJM Operating Agreement, and third, the PJM OATT.

**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.

**ATSI Load Zone** means the set of electrical locations that are provided transmission service by American Transmission Systems, Inc. (“ATSI”).

**ATSI Locational Reliability Charge** means, for each Participating LSE, an amount equal to such Participating LSE’s daily UCAP obligation (expressed in Megawatts) multiplied by the weighted average cost of procurement. The weighted average cost of procurement is calculated as the total Capacity in Megawatts procured in the FRR Integration Auction multiplied by FRR Integration Auction clearing price, plus the sum of the products of Capacity in Megawatts procured in each bilateral transaction and the corresponding bilateral procurement price per Megawatt for each bilateral transaction, divided by the total Capacity procured in FRR Integration Auctions and bilaterally.

**ATSI Utilities** has the meaning set forth in the preamble.

**Billing Period** means the period of days for which a PJM invoice is issued. For monthly

billing periods, such Billing Period includes the first day of the calendar month through the last day of the calendar month. For weekly billing periods, such Billing Period includes the first day of the calendar month through the Wednesday prior to the date the invoice is issued.

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

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

**Capacity Obligation** means, with respect to each Participating LSE, the final capacity obligation as calculated by PJM and as will be provided in writing to such Participating LSE by the ATSI Utilities no later than the January 31<sup>st</sup> immediately preceding the Delivery Period; provided, however, that the Capacity Obligation of any Participating LSE that is also an Opt-Out LSE (as defined in the Opt-Out Agreement) shall exclude the amount of the Capacity Obligation (as defined in the Opt-Out Agreement) of such Participating LSE.

**Capacity Supplier** means a supplier of Capacity from which the ATSI Utilities have procured Capacity to satisfy the Capacity requirement for the ATSI Load Zone for the Delivery Period as determined by PJM.

**Charge** means any fee, charge, PJM charge or any other amount that is billable by the ATSI Utilities to the Participating LSE under this Agreement, including the ATSI Locational Reliability Charge, Schedule 9-5 Charges, Schedule 9-6 Charges and Compliance Charges.

**Compliance Charges** means any Capacity Resource Deficiency Charges, Peak-Hour Period Availability Charges, Generation Resource Rating Test Failure Charges, Peak Season Maintenance Compliance Penalty Charges, Load Management Event Penalty Charges and Daily Load Management Test Failure Charges as such charges are defined in the PJM Agreements and the PJM Manuals.

**Confessed Amount** means, with respect to each Participating LSE, the amount in dollars listed in Appendix B.

**Confession of Judgment Event** means a Participating LSE fails to pay the ATSI Utilities any amount due under Sections 2.2 and 9.1 and Article 6.

**Confession of Judgment for Money** means Chapter 2950 of the Pennsylvania Code of Civil Procedure.

**Confession of Judgment for Possession of Real Property** means Chapter 2970 of the Pennsylvania Code of Civil Procedure.

**Delivery Period** means June 1, 2011 at 12:00:01 a.m. prevailing Eastern Time through and including May 31, 2012.

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

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

**FRR Integration Auction** means the auction conducted on March 15-19, 2010 whereby the ATSI Utilities procured Capacity for the Delivery Period in accordance with the Realignment Order.

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

**Interest Index** means the average Federal Funds Effective Rate, defined below, for the period 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/>.

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

**Letter of Credit** means a standby irrevocable letter of credit acceptable to the ATSI Utilities 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 5.2(b).

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

**Opt-Out Agreement** means the Agreement between the ATSI Utilities and each Opt-Out LSE (as defined therein) set forth in Appendix A thereto.

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

**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.

**Performance Assurance** means cash or a Letter of Credit provided by a Participating LSE to the ATSI Utilities pursuant to Article 5 to secure its obligations under this Agreement.

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

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

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

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

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

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

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

**S&P** means Standard and Poor's Rating Services.

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

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

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

**UCC** means the Uniform Commercial Code.

**Warrant of Attorney to Confess** means Section 2323.13 of Title 23 of the Ohio Revised Code.

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

### **2.1 ATSI Utilities to Procure and Manage Capacity**

(a) The ATSI Utilities shall procure and manage all the Capacity necessary to satisfy each Participating LSE's Capacity Obligation for the Delivery Period.

## **2.2 Participating LSE's Payment Obligations**

(a) During the Delivery Period, each Participating LSE shall pay all costs, expenses and Charges, including the ATSI Locational Reliability Charge, incurred by the ATSI Utilities as a result of the ATSI Utilities' procurement and management of the Capacity necessary to satisfy the Participating LSE's Capacity Obligation for the Delivery Period. Such costs incurred by the ATSI Utilities shall include those incurred by the ATSI Utilities in performing their obligations under this Agreement.

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

(c) The obligations of each Participating LSE in this Article 2 and as otherwise set forth in this Agreement shall be several, but not joint.

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

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

(b) At all times during the Delivery Period, each Participating LSE shall be bound by the PJM Agreements, PJM Manuals and any other operating instructions, policies and procedures set forth by the ATSI Utilities and/or PJM as may be necessary to implement this Agreement and as may be necessary or convenient for the ATSI Utilities to procure and manage Capacity to satisfy the Capacity Obligation for such Participating LSE.

## **2.4 Notice of Non-Compliance**

(a) Each Participating LSE shall promptly, but in any event within one (1) Business Day, notify the ATSI Utilities (in accordance with the notice provisions at Section 10.1) of its failure to timely perform any obligation under this Agreement, including but not limited to (i) its obligation to pay the Charges pursuant to this Article 2 and (ii) its obligations to provide and maintain adequate Performance Assurance pursuant to Article 5.

(b) Each Participating LSE shall promptly, but in any event within three (3) Business Days following the date on which it gains actual knowledge of any such event or circumstance, notify the ATSI Utilities (in accordance with the notice provisions at Section 10.1) of any event or circumstance which such Participating LSE reasonably believes could adversely impact its ability to timely perform any obligation under this Agreement.

(c) If any Participating LSE becomes aware that any of the representations or warranties in Article 3 are no longer true and correct at any time during the Term, or of any event that may reasonably be expected to cause any of such representations or warranties to become no longer true and correct in the future, such Participating LSE shall immediately (but in any event within three (3) Business Days following the date on which it gains actual knowledge thereof) notify the ATSI Utilities in accordance with the notice provisions at Section 10.1.

## **2.5 Regulatory Authorizations**

(a) Each Participating LSE shall obtain and maintain throughout the Delivery Period all regulatory authorizations necessary to perform its respective obligations under this Agreement.

(b) Each Participating LSE shall cooperate in good faith with the ATSI Utilities 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 in connection with this Agreement before FERC or any other Governmental Authority.

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

Each Participating LSE hereby represents and warrants to the ATSI Utilities as follows:

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

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

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

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

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

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

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

(i) as of the commencement of the Delivery Period, it is (i) a member in good standing of PJM and (ii) qualified as a "Market Buyer" pursuant to the PJM Agreements;  
and

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

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

##### **4.1 Term**

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

(b) Notwithstanding anything contained in this Agreement, if the ATSI Utilities determine that PJM does not have operational control over the American Transmission System, Incorporated's transmission system on or before the commencement of the Delivery Period, this Agreement shall terminate and any Performance Assurance held by the ATSI Utilities shall be returned to the Participating LSEs within thirty (30) Business Days of such determination.

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

Termination of this Agreement for any reason shall not relieve any Participating LSE of any obligation accruing on or prior to such termination. Any termination of this Agreement as between the ATSI Utilities and a Participating LSE shall not relieve or otherwise affect the ATSI Utilities or other Participating LSEs with respect to their other obligations under this Agreement, absent a written agreement to the contrary among the remaining parties. All provisions of this Agreement which must, in order to give full force and effect to the rights and obligations of the Parties, survive the termination or expiration of this Agreement shall so survive, including all provisions of Articles 5, 7, 8, 9, and 10 and Sections 4.2 and 6.2(g), in accordance with the terms thereof.

## **ARTICLE 5: PERFORMANCE ASSURANCE**

### **5.1 Performance Assurance**

If a Participating LSE's Capacity Obligation is 100 MW or greater (as calculated by PJM on or prior to the commencement of the FRR Integration Auction), then each such Participating LSE agrees that it will post \$1,000,000 in Performance Assurance within one (1) Business Day of the Effective Date. If a Participating LSE's Capacity Obligation is less than 100 MW (as calculated by PJM on or prior to the commencement of the FRR Integration Auction), then each such Participating LSE agrees that it will post \$500,000 in Performance Assurance within one (1) Business Day of the Effective Date. The ATSI Utilities will hold the Performance Assurance through the end of the Delivery Period and shall return such Performance Assurance, along with, in the case of cash, any interest thereon calculated in accordance with Section 5.4, to the Participating within thirty (30) Business Days of the expiration of the Delivery Period.

### **5.2 Acceptable Forms of Security**

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

- (a) cash credited to a deposit account of the ATSI Utilities; 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 ATSI Utilities receive notice from the issuing financial institution that the Letter of Credit is being cancelled, the Participating LSE will be required to provide a substitute Letter of

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

If the credit rating of a bank or other financial institution from which a Participating LSE has obtained a Letter of Credit falls below the levels set forth in the definition of “Letter of Credit”, the Participating LSE will immediately notify the ATSI Utilities 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 ATSI Utilities. If the Participating LSE fails to supply a substitute Letter of Credit as required, then the ATSI Utilities will have the right to draw on the existing Letter of Credit and to hold the amount as Performance Assurance.

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

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

To secure its obligations under this Agreement, each Participating LSE hereby

grants to the ATSI Utilities 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 securities, instruments (including promissory notes), money (each of the foregoing terms as defined in the UCC), cash and other tangible property delivered by such Participating LSE (or its agents or custodians) to and held by the ATSI Utilities and (ii) all proceeds (as defined in the UCC) of any and all of the foregoing. Each Participating LSE agrees to take such action as reasonably required to create and perfect the ATSI Utilities' first priority security interest in, and lien on (and right of setoff against), such Performance Assurance 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 default by a Participating LSE of its obligation under this Agreement or a misrepresentation by it, the ATSI Utilities may do any one or more of the following in any order: (i) exercise any of the rights and remedies of the ATSI Utilities, including the right to set-off and liquidation, against any and all Performance Assurance or other collateral of such Participating LSE in the possession of the ATSI Utilities, including any such rights and remedies under law then in effect, free from any claim or right of any nature whatsoever of such Participating LSE and (ii) draw on any outstanding Letter of Credit provided by such Participating LSE. The ATSI Utilities will apply the proceeds of the Performance Assurance realized upon the exercise of such rights or remedies to reduce such Participating LSE's obligation under this Agreement, and such Participating LSE shall remain liable for any amounts owing to the ATSI Utilities after such application, subject to the ATSI Utilities' obligation to return any surplus proceeds

remaining after all such obligations are satisfied in full.

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

#### **5.4 Interest on Cash Held by ATSI Utilities**

The ATSI Utilities will pay simple interest calculated at the lower of the Interest Index or six percent (6%) per annum on all cash held by the ATSI Utilities pursuant to this Agreement.

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

#### **6.1 PJM Billing**

(a) For each Billing Period, PJM will (x) invoice each Participating LSE its ATSI Locational Reliability Charges, Schedule 9-5 Charges and Schedule 9-6 Charges and any other applicable charges for such Billing Period, as determined by PJM, and (y) assess to the ATSI Utilities a corresponding credit after PJM receives payment for such charges from the Participating LSEs.

(b) For each Billing Period, to the extent applicable, PJM will on each Participating LSE's invoice, assess a credit in connection with Compliance Charges assessed to Capacity Suppliers and allocated to such Participating LSE in accordance with the PJM Agreements and PJM Manuals.

#### **6.2 ATSI Utilities Statement**

In the event that the ATSI Utilities are required to make payment to PJM due to any Participating LSE's failure to perform its obligations under this Agreement:

(a) The ATSI Utilities will prepare and provide an invoice to such Participating LSE, which will show all amounts due to the ATSI Utilities (the “Statement”). The ATSI Utilities will specify in each Statement how the amounts will be allocated among the ATSI Utilities.

(b) The Participating LSE will make payment within ten (10) Business Days of receipt of the Statement.

(c) 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 end of the Term.

(d) The Participating LSE shall make payments of funds by electronic transfer to a bank designated by the ATSI Utilities.

(e) If a good faith dispute arises between the ATSI Utilities and the Participating LSE regarding a Statement, the Participating LSE shall be obligated to pay only the undisputed portion of the Statement when due, and shall present the dispute in writing and submit supporting documentation to the ATSI Utilities within thirty (30) calendar days from the date of the Statement in dispute. Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 7. Upon resolution of a Statement dispute, any payments made to the ATSI Utilities 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 ATSI Utilities.

(f) If payment is made to the ATSI Utilities after the due date shown on the Statement, a late fee will be added to the undisputed unpaid balance until the entire Statement is paid. This late fee will be calculated at the prime rate J.P. Morgan Chase & Co. (or, if not available, another financial institution selected by the ATSI Utilities) charges commercial borrowers plus three percent (3%) per annum.

(g) In the event of a good faith dispute regarding any Statement, each Participating LSE will have the right to verify, at its sole expense, the accuracy of the Statement or the calculation of the payment due by obtaining copies of the relevant portions of the books and records of the applicable ATSI Utility. The right of verification will survive for one (1) year following the end of the Term.

(h) Notwithstanding anything to the contrary contained in this Section 6.2, the determination of the allocation among the ATSI Utilities of amounts due and owing to the ATSI Utilities, as set forth in a Statement, will be final and binding, absent manifest error.

(i) Any of the Participating LSEs' payment obligations to the ATSI Utilities under this Agreement shall be unconditional, shall be made in immediately available funds, without deductions, set-off or counterclaims on the date on which such payment is due.

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

### **7.1 Negotiation**

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof, but not including any claim based on the

occurrence of a Confession of Judgment Event, (“Dispute”) shall be subject to the dispute resolution procedures specified in this Article 7. If any Dispute arises between any Parties in connection with this Agreement, such Parties in Dispute shall first attempt to resolve such Dispute by negotiation. The disputing Parties shall comply with the procedures in this Section 7.1 before commencing litigation under Section 7.2. When any such Dispute arises, a disputing Party shall deliver a written notice of Dispute to the other Party or Parties involved in the Dispute in accordance with the notice procedures set forth in Section 10.1, 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 for any reasons within thirty (30) days after receipt of the notice of dispute, then any such Party may bring such action at law or in equity as it deems necessary or desirable, in accordance with the provisions of Section 7.2. Any amounts that are owed by one Party to another Party as a result of resolution of a Dispute pursuant to this Section 7.1 shall be paid within 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.

## **7.2 Formal Dispute Resolution**

All Disputes between the Parties that are not resolved in accordance with Section 7.1 shall be submitted to any of the courts of competent jurisdiction located in Summit County, Ohio, which courts shall have exclusive jurisdiction to settle such Disputes. Each Party hereto unconditionally and irrevocably agrees to submit to the jurisdiction of

the aforesaid courts for the purpose of any such proceedings and unconditionally and irrevocably waives any objections which they may have now or in the future to the jurisdiction of such courts including without limitation objections by reason of lack of personal jurisdiction, improper venue or inconvenient forum.

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

Except to the extent expressly set forth in this Agreement, including Articles 5 and 9, except for each Participating LSE's obligation to reimburse and indemnify the ATSI Utilities for Charges and other costs and expenses incurred by the ATSI Utilities in procuring and managing Capacity under this Agreement, as between the ATSI Utilities and each Participating LSE, each Party will be liable to the other for direct damages incurred as a result of such Party's failure to comply with this Agreement and no Party will have any liability to the other Party for consequential, indirect, special or punitive damages, including lost profits or lost revenues, arising out of such Party's failure to comply with its obligations under this Agreement. Notwithstanding anything to the contrary in this Agreement, nothing herein shall impose any obligations or liability from one Participating LSE to any other Participating LSE.

## **ARTICLE 9:       INDEMNIFICATION**

### **9.1    Indemnification**

(a) Each Participating LSE must defend (at the ATSI Utilities' option), indemnify and hold harmless the ATSI Utilities, their shareholders, board members, directors, officers and employees, agents and attorneys from and against (a) any Charges assessed to the ATSI Utilities by PJM which are attributable to such Participating LSE

under the terms of this Agreement and (b) to the extent not duplicative with clause (a) above, any and all third party (including PJM and each other Participating LSE) 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 Participating LSE with respect to an obligation arising under or in connection with this Agreement, or for which such Participating LSE has otherwise assumed liability under the terms of this Agreement, except in each case 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 ATSI Utilities. The ATSI Utilities may, at their own expense, retain counsel and participate in the defense of any such suit or action.

(b) The obligation of a Participating LSE to defend, indemnify, and hold harmless the ATSI Utilities 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 any Participating LSE under any statutory scheme.

(c) If the ATSI Utilities intend to seek indemnification under Section 9.1(a) from a Participating LSE, the ATSI Utilities shall give such Participating LSE notice of such claim within thirty (30) days of the later of the commencement of, or the ATSI Utilities' 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 the ATSI Utilities. To the extent such Participating LSE 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 Participating LSE under the provisions for indemnification contained in this Agreement. No Participating LSE may settle or compromise any claim without the prior consent of the ATSI Utilities.

## **ARTICLE 10: MISCELLANEOUS PROVISIONS**

### **10.1 Notices**

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

If to a Participating LSE:

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

If to the ATSI Utilities:

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

Dean W. Stathis  
Director, Regulated Commodity Sourcing  
FirstEnergy Service Company  
2800 Pottsville Pike  
R-REAP-9  
Reading, PA 19612  
Telephone: 610-921-6766  
Facsimile: 610-939-8542  
dstathis@firstenergycorp.com

Copy to:

Morgan E. Parke, Esq.

FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
Telephone: 330-384-4595  
Facsimile: 330-384-4539  
mparke@firstenergycorp.com

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

Thomas R. Sims  
Senior Business Analyst  
FirstEnergy Corp.  
76 South Main Street, 17th Floor  
Akron, OH 44308  
Telephone: 330-384-3808  
Facsimile: 330-255-1662  
simst@firstenergycorp.com

Copy to:

Dean W. Stathis  
Director, Regulated Commodity Sourcing  
FirstEnergy Service Company  
2800 Pottsville Pike  
R-REAP-9  
Reading PA 19612  
Telephone: 610-921-6766  
Facsimile: 610-939-8542  
dstathis@firstenergycorp.com

and:

Morgan E. Parke, Esq.  
FirstEnergy Corp.  
76 South Main Street  
Akron, OH 44308  
Telephone: 330-384-4595  
Facsimile: 330-384-4539  
mparke@firstenergycorp.com

or to such other person or such other address as a Party may designate by notice to the

other Party. Notice received after the close of the Business Day will be deemed received on the next Business Day. Notice by email or facsimile transmission will be deemed to have been received by the recipient on the date the recipient confirms receipt either orally or in writing.

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

The failure of the ATSI Utilities 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 ATSI Utilities.

### **10.3 Assignment**

(a) The ATSI Utilities may assign this Agreement or their rights or obligations hereunder without the prior written consent of the Participating LSEs and shall be relieved of such obligations upon the assignment and assumption of the assignee of such obligations and the Participating LSEs' receipt of notice thereof, except for such obligations of the ATSI Utilities which have arisen prior to the date of the assignment.

(b) A Participating LSE may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the ATSI Utilities.

### **10.4 Governing Law**

To the extent not subject to the jurisdiction of FERC, questions including those

concerning the formation, validity, interpretation, execution, amendment, termination and construction of this Agreement will be governed by the laws of the State of Ohio, without regard to principles of conflicts of law.

#### **10.5 Third Party Beneficiaries**

This Agreement is intended solely for the benefit of the Parties 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.

#### **10.6 Unenforceability or Invalidity**

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

#### **10.7 Entire Agreement**

Each of the Parties acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms. This Agreement is intended by the Parties as a final expression of their agreement 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.

#### **10.8 Taxes**

All present and future sales, use, excise or other similar taxes imposed by any

federal, state, municipal or other taxing authority by reason of the payments arising under this Agreement by a Participating LSE under this Agreement (collectively, the “Taxes”) will be the liability of such Participating LSE. Each Participating LSE shall pay all Taxes to the applicable taxing authority to the extent required or permitted by law. If any transaction is exempt from the payment of any such Taxes, the affected Participating LSE will, if requested, provide the ATSI Utilities with valid tax exemption certificates. Should the ATSI Utilities be required to remit any Taxes directly to any applicable taxing authority, the Participating LSE will defend and indemnify the ATSI Utilities and will pay to the ATSI Utilities 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 (i) the reporting of any Taxes payable by a Participating LSE; (ii) any Tax audit; or (iii) any assessment, refund claim or proceeding relating to Taxes. Each Party shall cooperate with the other Party and take any action reasonably requested, which does not cause the Party to incur any material cost or inconvenience, in order to minimize any Taxes payable.

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

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

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

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

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

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

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

(f) 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; and

(g) any rule of interpretation that provides that ambiguities shall be construed against the drafting party shall not apply.

#### **10.10 Confidentiality**

(a) Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement or the FRR Integration Auction without consent of such Party; provided however that a Party may disclose such document or information without the consent of the other Party (i) if required by any federal, state or local agency or by a court of competent jurisdiction,

provided that the disclosing Party shall seek a protective order or other legal protection as is reasonably available under the circumstances to preserve the confidentiality of the document or information; (ii) to its employees, representatives, agents and rating agencies all documents and information furnished by the other Party in connection with this Agreement, provided that they have been advised of the confidentiality provisions of this Section 10.10, and further provided that in no event shall a document or information be disclosed in violation of the standard of conduct requirements established by FERC; (iii) such document or information is generally available to the public; or (iv) such document or information was available to the receiving Party on a non-confidential basis from a third party, provided that the receiving Party does not know that such third party is prohibited from transmitting the document or information to the receiving Party by a contractual, legal or fiduciary obligation.

(b) Notwithstanding any other provision of this Section 10.10, the ATSI Utilities may disclose any document or information furnished by a Participating LSE in connection with this Agreement without the consent of such Participating LSE to (i) PJM or the PJM Market Monitor or (ii) to the extent required or the ATSI Utilities deem appropriate before any regulatory agency or court (in which case the proviso in Section 10.10(a)(i) shall apply).

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

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

### **10.11 Amendment**

(a) This Agreement shall not be amended, modified, terminated, discharged or supplanted, nor any provision hereof waived, unless mutually agreed in writing by the Parties. The rates, terms and conditions contained in this Agreement are not subject to change under Sections 205 and 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all Parties, the standard of review for changes to this Agreement proposed by a Party, a non-Party or FERC acting sua sponte shall be the "public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956), and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956) and affirmed by Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington, 128 S. Ct. 2733 (2008).

(b) No Participating LSE may file an amendment to this Agreement with FERC or any other Governmental Authority without the express written approval of the ATSI Utilities (such approval to be withheld in the ATSI Utilities' sole discretion).

**10.12 Agent**

The ATSI Utilities 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.

**10.13 Counterparts**

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

**10.14 Confession of Judgment**

**(a) THIS AGREEMENT CONTAINS A CONFESSION OF JUDGMENT PROVISION THAT CONSTITUTES A WAIVER OF IMPORTANT RIGHTS A PARTICIPATING LSE MAY HAVE HEREUNDER AND ALLOWS THE ATSI UTILITIES TO OBTAIN A JUDGMENT AGAINST A PARTICIPATING LSE WITHOUT FURTHER NOTICE.**

**(b) THE FOLLOWING PROVISIONS SET FORTH WARRANTS OF AUTHORITY FOR AN ATTORNEY TO CONFESS JUDGMENT AGAINST A PARTICIPATING LSE. IN GRANTING THESE RIGHTS, EACH PARTICIPATING LSE HEREBY, ON THE ADVICE OF THE SEPARATE COUNSEL OF SUCH PARTICIPATING LSE, KNOWINGLY, INTENTIONALLY, VOLUNTARILY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY AND ALL RIGHTS SUCH PARTICIPATING LSE HAD OR MAY HAVE TO PRIOR NOTICE AND AN OPPORTUNITY FOR HEARING UNDER THE RESPECTIVE CONSTITUTIONS AND LAWS OF THE UNITED STATES AND THE STATES**

**OF OHIO, PENNSYLVANIA, AND ALL OTHER JURISDICTIONS.**

**(c) UPON A CONFESSION OF JUDGMENT EVENT (AS DEFINED IN THIS AGREEMENT), EACH PARTICIPATING LSE HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS ANY ATTORNEY OF ANY COURT OF RECORD WITHIN THE UNITED STATES OF AMERICA OR ELSEWHERE TO APPEAR FOR SUCH PARTICIPATING LSE, WITH OR WITHOUT COMPLAINT FILED, TO WAIVE ISSUANCE OF SERVICE OF PROCESS AND TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, AGAINST SUCH PARTICIPATING LSE IN FAVOR OF THE ATSI UTILITIES FOR AN AMOUNT EQUAL TO THE CONFESSED AMOUNT (AS DEFINED IN THIS AGREEMENT), TOGETHER WITH THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES. FOR DOING SO, THIS AGREEMENT OR A COPY VERIFIED BY AFFIDAVIT SHALL BE A SUFFICIENT WARRANT. NO SINGLE EXERCISE OF THE FOREGOING POWER TO CONFESS JUDGMENT, OR A SERIES OF JUDGMENTS, SHALL BE DEEMED TO EXHAUST THE POWER, WHETHER OR NOT ANY SUCH EXERCISE SHALL BE HELD BY ANY COURT TO BE INVALID, VOIDABLE OR VOID, BUT THE POWER SHALL CONTINUE UNDIMINISHED AND IT MAY BE EXERCISED FROM TIME TO TIME AS OFTEN AS THE ATSI UTILITIES SHALL ELECT UNTIL SUCH TIME AS THE ATSI UTILITIES SHALL HAVE RECEIVED PAYMENT IN FULL OF THE CONFESSED AMOUNT AND THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES.**

**(d) EACH PARTICIPATING LSE HEREBY ACKNOWLEDGES THAT**

**BY AGREEING TO THE FOREGOING CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY, SUCH PARTICIPATING LSE WAIVES THE RIGHT TO NOTICE AND A PRIOR JUDICIAL PROCEEDING TO DETERMINE ITS RIGHTS AND LIABILITIES (INCLUDING, WITHOUT LIMITATION, ALL STAYS OF EXECUTION, RIGHTS OF INQUISITION AND EXTENSION UPON ANY LEVY UPON REAL ESTATE), AND FURTHER ACKNOWLEDGES THAT THE ATSI UTILITIES MAY, UPON A CONFESSION OF JUDGMENT EVENT, OBTAIN A JUDGMENT AGAINST SUCH PARTICIPATING LSE FOR THE CONFESSED AMOUNT AND THE COSTS OF SUIT AND REASONABLE ATTORNEYS' FEES, AND LEVY EXECUTION ON JUDGMENT AGAINST ANY AND ALL PROPERTY OF SUCH PARTICIPATING LSE WITHOUT ANY OPPORTUNITY OF SUCH PARTICIPATING LSE TO RAISE ANY DEFENSE, SETOFF, COUNTERCLAIM OR OTHER CLAIM THAT SUCH PARTICIPATING LSE MAY HAVE, AND THAT SUCH PARTICIPATING LSE KNOWINGLY, INTENTIONALLY, VOLUNTARILY AND INTELLIGENTLY GRANTS THE ATSI UTILITIES THE FOREGOING RIGHT TO CONFESS JUDGMENT AND WARRANT OF ATTORNEY AS AN EXPLICIT AND MATERIAL PART OF THE CONSIDERATION BARGAINED FOR BETWEEN SUCH PARTICIPATING LSE AND THE ATSI UTILITIES.**

**(e) EACH PARTICIPATING LSE HEREBY CERTIFIES THAT IT HAS BEEN REPRESENTED AT THE SIGNING OF THIS AGREEMENT AND IN THE GRANTING OF THIS CONFESSION OF JUDGMENT AND WARRANT**

**OF ATTORNEY BY INDEPENDENT LEGAL COUNSEL, SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS HAD THE OPPORTUNITY TO DISCUSS THE CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY WITH SUCH COUNSEL. EACH PARTICIPATING LSE HEREBY FURTHER CERTIFIES THAT IT HAS READ AND UNDERSTANDS THE MEANING AND EFFECT OF THE FOREGOING CONFESSION OF JUDGMENT AND WARRANT OF ATTORNEY. EACH PARTICIPATING LSE FURTHER ACKNOWLEDGES THAT THIS AGREEMENT IS A COMMERCIAL TRANSACTION, NOT A CONSUMER LOAN OR OTHER CONSUMER TRANSACTION, AND THAT THE RELATIONSHIP BETWEEN THE ATSI UTILITIES AND SUCH PARTICIPATING LSE CREATED HEREUNDER IS COMMERCIAL IN NATURE.**

**(f) IN ANY SUCH ACTION FOR CONFESSION OF JUDGMENT, IF THE ATSI UTILITIES SHALL FIRST CAUSE TO BE FILED IN SUCH ACTION AN AFFIDAVIT MADE BY THEM OR SOMEONE ACTING FOR THEM SETTING FORTH THE FACTS NECESSARY TO AUTHORIZE THE ENTRY OF JUDGMENT, SUCH AFFIDAVIT SHALL BE CONCLUSIVE EVIDENCE OF SUCH FACTS; AND IF A TRUE COPY OF THIS AGREEMENT (AND SUCH AFFIDAVIT SHALL BE SUFFICIENT EVIDENCE OF THE TRUTH OF THE COPY) BE FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL AS A WARRANT OF ATTORNEY, ANY RULE OF COURT, CUSTOM OR PRACTICE TO THE CONTRARY NOTWITHSTANDING. EACH PARTICIPATING LSE HEREBY WAIVES AND**

**RELEASES THE ATSI UTILITIES, AND ANY AND ALL ATTORNEYS WHO MAY APPEAR FOR THE ATSI UTILITIES, FROM ALL PROCEDURAL ERRORS IN ANY PROCEEDINGS TAKEN BY THE ATSI UTILITIES OR SUCH ATTORNEYS, WHETHER BY VIRTUE OF THE WARRANTS OF ATTORNEY CONTAINED IN THIS AGREEMENT OR NOT, STAY OF EXECUTION AND EXTENSION OF TIME OF PAYMENT AND ALL LAWS EXEMPTING REAL AND PERSONAL PROPERTY FROM EXECUTION AND ALL LIABILITY THEREFOR, AND NO BENEFIT OF EXEMPTION WILL BE CLAIMED BY SUCH PARTICIPATING LSE UNDER AND BY VIRTUE OF ANY EXEMPTION LAW NOW IN FORCE OR WHICH MAY HEREAFTER BE PASSED.**

**(g) IN ANY CASE IN WHICH THE ATSI UTILITIES SHALL SEEK TO ENFORCE THIS CONFESSION OF JUDGMENT IN A COURT BOUND BY THE PROVISIONS OF SECTION 2323.13 OF TITLE 23 OF THE OHIO REVISED CODE (“WARRANT OF ATTORNEY TO CONFESS”) OR ANY SUCCESSOR PROVISIONS, THE ATSI UTILITIES ACKNOWLEDGE BEING BOUND BY AND SUBJECT TO COMPLIANCE WITH THESE PROVISIONS AS FAR AS REQUIRED FOR THE VALIDITY AND ENFORCEABILITY OF THE CONFESSION OF JUDGMENT, ANY STATEMENTS ABOVE TO THE CONTRARY NOTWITHSTANDING.**

**(h) IN ANY CASE IN WHICH THE ATSI UTILITIES SHALL SEEK TO ENFORCE THIS CONFESSION OF JUDGMENT IN A COURT BOUND BY THE PROVISIONS OF CHAPTERS 2950 (“CONFESSION OF JUDGMENT FOR**

**MONEY”) OR 2970 (“CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY”) OF THE PENNSYLVANIA CODE OF CIVIL PROCEDURE OR ANY SUCCESSOR PROVISIONS, THE ATSI UTILITIES ACKNOWLEDGE BEING BOUND BY AND SUBJECT TO COMPLIANCE WITH THESE PROVISIONS AS FAR AS REQUIRED FOR THE VALIDITY AND ENFORCEABILITY OF THE CONFESSION OF JUDGMENT, ANY STATEMENTS ABOVE TO THE CONTRARY NOTWITHSTANDING.**

**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

PENNSYLVANIA POWER COMPANY

By \_\_\_\_\_

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

Name:

Name:

Title:

Title:

[PARTICIPATING LSE SIGNATURES APPEAR ON SUCCEEDING PAGES]

[PARTICIPATING LSE]

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

Name:

Title:

**WARNING — BY SIGNING THIS PAPER, YOU GIVE UP YOUR RIGHT TO NOTICE AND COURT TRIAL. IF YOU DO NOT TIMELY PAY, A COURT JUDGMENT MAY BE TAKEN AGAINST YOU WITHOUT YOUR PRIOR KNOWLEDGE AND THE POWERS OF A COURT CAN BE USED TO COLLECT FROM YOU REGARDLESS OF ANY CLAIMS YOU MAY HAVE AGAINST THE CREDITOR WHETHER FOR RETURNED GOODS, FAULTY GOODS, FAILURE ON HIS PART TO COMPLY WITH THE AGREEMENT, OR ANY OTHER CAUSE.**

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

**PARTICIPATING LSEs**

Participating LSE

---

Delivery Period: June 1, 2011 through May 31, 2012.

Address for Notice:

1. In the case of all notices except those required under Article 5:

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

copy to:

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

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

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

copy to:

Name:  
Address:  
Telephone:  
Facsimile:

---

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

E-mail:

**[PARTICIPATING LSE]**

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

**APPENDIX B<sup>3</sup>**

**PARTICIPATING LSE'S CONFESSED AMOUNT**

Participating LSE  
\_\_\_\_\_

Delivery Period: June 1, 2011 through May 31, 2012.

The Participating LSE's Confessed Amount is equal to [ ] dollars (\$[ ]) multiplied by the number of months (including any fraction thereof) between the date on which the confession of judgment contemplated by Section 10.14 is filed with the applicable court and June 1, 2012, and any damages as reasonably determined by the ATSI Utilities occurring prior to the filing of the confession of judgment.

\_\_\_\_\_  
<sup>3</sup> Appendix B to be completed for each Participating LSE.

**APPENDIX C**

**FORM OF PARTICIPATING LSE LETTER OF CREDIT**

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

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

To: The Cleveland Electric Illuminating Company, The Toledo Edison Company, Ohio Edison Company, and Pennsylvania Power 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 in the event that (i) the Applicant fails to perform any obligation set forth in that certain Capacity Payment Agreement between the Applicant and you dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Agreement is false or misleading in any material respect when made, or you receive notice from us that this

Letter of Credit is being cancelled and the Applicant fails to provide a substitute Letter of Credit from us or an alternative bank satisfying the requirements in such Agreement, or if our credit rating falls below the levels set forth in Paragraph 11 of this Letter of Credit and the Applicant fails to obtain a suitable Letter of Credit from another bank or other financial institution that meets the standards set out in such Agreement.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (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

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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.

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 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 ATSI Utilities 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 \$ \_\_\_\_\_, in the event that the Applicant fails to perform any obligation set forth in that certain Agreement between the Applicant and us dated \_\_\_\_\_, or any representation or warranty made by the Applicant in such Agreement is false or misleading in any material respect when made, or due to our receipt from you of notice that the Letter of Credit is being cancelled and the Applicant has failed to provide a substitute Letter of Credit from an alternative bank satisfying the requirements in such agreement, or due to a decline in your credit rating below the levels set forth in Paragraph 11 of the Letter of Credit and the Applicant has failed to obtain a substitute Letter of Credit from another bank or other financial institution that meets the standards in such agreement.
3. The amount to be received by The Cleveland Electric Illuminating Company is \$ \_\_\_\_\_, the amount to be received by The Toledo Edison Company is \$ \_\_\_\_\_, the amount to be received by The Ohio Edison Company is \$ \_\_\_\_\_, and the amount to be received by Pennsylvania Power 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

The Toledo Edison Company

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

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

Ohio Edison Company

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

Pennsylvania Power Company

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

**Annex 2 to Letter of Credit**

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

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

ON [Business Day set forth in Paragraph 5]

PAY TO:           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 \_\_\_\_\_.

PAY TO:           Pennsylvania Power 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:

Pennsylvania Power Company

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

Name:

Title:

Date:

**Annex 3 to Letter of Credit**

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

\_\_\_\_\_, 20\_\_  
To: (Bank)  
(Address)

Attention: Standby Letter of Credit Unit

Ladies and Gentlemen:

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

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

[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:

Pennsylvania Power Company  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

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

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

Date:

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:

Pennsylvania Power Company

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

Name:

Title:

Date:

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

**Annex 5 to Letter of Credit**

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

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

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

Pennsylvania Power Company  
By: \_\_\_\_\_  
Name:  
Title:  
Date:

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

**Annex 6 to Letter of Credit**

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

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

To:

[Bank]

[Bank Address]

To Whom It May Concern:

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

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

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

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

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

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

all rights of the undersigned 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:

Pennsylvania Power Company

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

Name:

Title:

Date:

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

(Name of authenticating party)

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

Name

Title