

3/10/2010

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

CAPACITY PURCHASE AND SALE AGREEMENT

AMONG

THE CLEVELAND ELECTRIC ILLUMINATING COMPANY

THE TOLEDO EDISON COMPANY

OHIO EDISON COMPANY

PENNSYLVANIA POWER COMPANY

AND

EACH CAPACITY SUPPLIER SET FORTH ON APPENDIX A HERETO

2011-2012 DELIVERY YEAR

TABLE OF CONTENTS

| | |
|---|-----------|
| TABLE OF CONTENTS..... | i |
| ARTICLE 1: DEFINITIONS..... | 2 |
| ARTICLE 2: GENERAL TERMS AND CONDITIONS..... | 7 |
| 2.1 Capacity Supplier’s Obligations to Provide Capacity..... | 7 |
| 2.2 ATSI Utilities’ Obligation to Purchase Capacity..... | 8 |
| 2.3 Capacity Resources..... | 8 |
| 2.4 PJM Membership; PJM Protocols..... | 9 |
| 2.5 Regulatory Authorizations; Governmental Directives..... | 10 |
| 2.6 PJM Charges and Credits..... | 10 |
| 2.7 EFORd..... | 12 |
| 2.8 Transmission Service..... | 12 |
| ARTICLE 3: REPRESENTATIONS AND WARRANTIES..... | 13 |
| 3.1 Capacity Supplier’s Representations and Warranties..... | 13 |
| 3.2 ATSI Utilities’ Representations and Warranties..... | 15 |
| 3.3 Notice..... | 16 |
| ARTICLE 4: COMMENCEMENT AND TERMINATION OF AGREEMENT..... | 16 |
| 4.1 Term..... | 16 |
| 4.2 Effect of Termination on Obligations; Survival..... | 17 |
| 4.3 Early Termination..... | 17 |
| ARTICLE 5: BREACH AND DEFAULT..... | 17 |
| 5.1 Events of Default..... | 17 |
| 5.2 Rights Upon and Event of Default..... | 19 |
| 5.3 Default Damages; Settlement Amount; Termination Payment..... | 20 |
| 5.4 Step-up Provision..... | 22 |
| 5.5 Set-off of Payment Obligations of the Non-Defaulting Party..... | 23 |
| 5.6 Preservation of Rights of Non-Defaulting Party..... | 23 |
| ARTICLE 6: PERFORMANCE ASSURANCE..... | 24 |
| 6.1 Performance Assurance Calculation..... | 24 |
| 6.2 Acceptable Forms of Security..... | 25 |
| 6.3 Grant of Security Interest; Remedies..... | 26 |
| 6.4 Interest on Cash Held by ATSI Utilities..... | 28 |
| ARTICLE 7: BILLING AND SETTLEMENT..... | 28 |
| 7.1 Settlement..... | 28 |
| 7.2 Payment..... | 28 |
| ARTICLE 8: DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION..... | 30 |
| 8.1 Negotiation..... | 30 |
| 8.2 Formal Dispute Resolution..... | 31 |
| ARTICLE 9: LIMITATION OF LIABILITY..... | 31 |
| ARTICLE 10: INDEMNIFICATION..... | 32 |

| | | |
|--|---------------------------------------|-------------------------|
| 10.1 | Indemnification..... | 32 |
| ARTICLE 11: MISCELLANEOUS PROVISIONS..... | | 34 |
| 11.1 | Notices..... | 34 |
| 11.2 | No Waiver or Prejudice of Rights..... | 36 <u>35</u> |
| 11.3 | Assignment..... | 36 |
| 11.4 | Governing Law and Venue..... | 37 |
| 11.5 | Third Party Beneficiaries..... | 37 |
| 11.6 | Unenforceability or Invalidity..... | 38 <u>37</u> |
| 11.7 | Entire Agreement..... | 38 |
| 11.8 | Taxes..... | 38 |
| 11.9 | Rules of Interpretation..... | 39 |
| 11.10 | Confidentiality..... | 40 |
| 11.11 | Amendment..... | 41 |
| 11.12 | Agent..... | 42 |
| 11.13 | Counterparts..... | 42 |
| APPENDIX A CAPACITY RESOURCE AMOUNT AND NOTICE ADDRESSES..... | | 1 |
| APPENDIX B FORM OF CAPACITY SUPPLIERS' LETTER OF CREDIT..... | | 1 |
| APPENDIX C FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT..... | | 1 |

CAPACITY PURCHASE & SALE AGREEMENT

THIS CAPACITY PURCHASE & SALE AGREEMENT (this “Agreement”) made and entered into this ___ day of March, 2010 (the “Effective Date”) by and among 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 Commonwealth of Pennsylvania who shall bear their obligations hereunder jointly and severally (collectively, the “ATSI Utilities”), and each of the capacity suppliers listed on Appendix A who shall bear their obligations hereunder severally but not jointly (each a “Capacity Supplier” and, collectively, the “Capacity Suppliers”). The ATSI Utilities and each Capacity Supplier 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, pursuant to the Realignment Order, FERC authorized the ATSI Utilities to procure Capacity during the Delivery Period by means of an out-of-time fixed resource requirement plan. Under the plan, the ATSI Utilities were permitted to procure Capacity for the Delivery Period by means of a competitive auction process (the “FRR Integration Auction”), provided that if the ATSI Utilities were unable to procure the full requirement for the Delivery Period from such FRR Integration Auction, the ATSI

1.....DeltaView comparison of pcdocs://wassr01a/1012109/3 and pcdocs://wassr01a/1012109/3a. Performed on 3/11/2010.

Utilities intended to procure any remaining balance through bilateral contracts; and

WHEREAS, each Capacity Supplier submitted a binding offer in the FRR Integration Auction and was a winning offeror in the FRR Integration Auction; and

WHEREAS, the ATSI Utilities and the Capacity Suppliers desire to enter into this Agreement setting forth their respective obligations concerning the provision of Capacity for the Delivery Period; 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.

Additional Performance Assurance means cash or a Letter of Credit provided by a Capacity Supplier to the ATSI Utilities pursuant to Section 6.1(c).

Affiliates 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.

Agreement has the meaning set forth in the preamble.

Assignment and Assumption Agreement means that certain Assignment and Assumption Agreement, dated as of the date thereof, between the applicable Assignor

and its Assignee (as defined therein), substantially in the form of Appendix C.

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

ATSI Utilities has the meaning set forth in the preamble.

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

Capacity Resource Amount means, with respect to each Capacity Supplier, the quantity of Capacity, expressed in Megawatts, that such Capacity Supplier is obligated to deliver to the ATSI Utilities pursuant to the terms of this Agreement, as set forth in Appendix A.

Capacity Shortfall has the meaning set forth in Section 2.7.

Capacity Supplier has the meaning set forth in the preamble.

Charges means any PJM charge that is attributable to the Capacity Supplier under this Agreement, including Compliance Charges, Schedule 9-5 Charges and Schedule 9-6 Charges.

Charges Limit has the meaning set forth in Section 2.7.

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.

Costs means, 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 or enforcement of this Agreement as between the ATSI Utilities and the applicable Capacity Supplier.

Credit Representative and Information Form means the form containing credit information of a Capacity Supplier submitted by each Capacity Supplier to the ATSI Utilities prior to the FRR Integration Auction.

Credits means any refund or adjustment in connection with the settlement or re-settlement of Charges or Compliance Charges, or relief from Compliance Charges and Peak Hour Period Availability Credits, in each case as determined by PJM.

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 include: (i) the positive difference (if any) between the Price of Capacity hereunder and the price at which the ATSI Utilities or the Capacity Supplier is able to purchase or sell (as applicable) Capacity from or to third parties, including other Capacity Suppliers and PJM, multiplied by the quantity of the undelivered Capacity Resource Amount; (ii) additional transmission or congestion costs, if applicable, incurred to purchase or sell Capacity; (iii) Costs and (iv) Charges.

Defaulting Party has the meaning set forth in Section 5.1.

Delivery Period means June 1, 2011 at 12:00:01 a.m. prevailing Eastern Time through and including May 31, 2012, unless this Agreement is terminated earlier in accordance with the provisions hereof.

Dispute has the meaning set forth in Section 8.1.

Early Termination has the meaning set forth in Section 4.3.

4.....DeltaView comparison of pcdocs://wassr01a/1012109/3 and pcdocs://wassr01a/1012109/3a. Performed on 3/11/2010.

Early Termination Date means, as between the ATSI Utilities and the applicable Capacity Supplier, the date upon which an Early Termination becomes effective as specified in Section 5.2(a).

Effective Date has the meaning set forth in the preamble.

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

Fitch means Fitch, Inc.

FRR Integration Auction has the meaning set forth in the recitals to this Agreement.

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 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.

Indemnified Supplier has the meaning set forth in Section 10.1(b).

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/>.

Invoice Amount means, for each Capacity Supplier, an amount equal to the Capacity Resource Amount for such Capacity Supplier multiplied by the Price less any Charges which are attributed to such Capacity Supplier and charged to the ATSI Utilities plus any Credits which are attributed to such Capacity Supplier and received by the ATSI Utilities from PJM, as set forth in Section 2.6.

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 B and including all of the requirements specifically set forth in Section 6.2(b).

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.

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

Non-Defaulting Party means (i) where a Capacity Supplier is the Defaulting Party, each of the ATSI Utilities; (ii) where the ATSI Utilities are the Defaulting Party with respect to an Event of Default, the Capacity Supplier to which the applicable obligation was

owed.

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

Peak Hour Period Availability Credits means the allocation of Peak Hour Period Availability Charges, as defined in PJM Manual 18.

Performance Assurance means (i) cash or a Letter of Credit provided by a Capacity Supplier to the ATSI Utilities pursuant to Section 6.1 and (ii) Additional Performance Assurance, in each case, to secure such Capacity Supplier's obligations under this Agreement.

Performance Assurance Amount has the meaning set forth in Section 6.1(a).

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

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, including but not limited to PJM Manual 18, as such PJM Manuals may be amended, superseded or replaced from time to time.

PJM Market Monitor means Monitoring Analytics, LLC, the independent firm charged with monitoring the PJM markets, or any successor thereto.

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.

Price means, with respect to each Capacity Supplier, the price in \$/Megawatt-day set forth in Appendix A, resulting from the FRR Integration Auction. The Price is the basis for financial settlement of Capacity supplied by a Capacity Supplier under this Agreement.

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

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

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 Delivery Period. The calculation of Settlement Amount with respect to an Early Termination shall exclude Default Damages calculated pursuant to Section 5.3(b).

Statement has the meaning set forth in Section 7.1(b).

Taxes have the meaning set forth in Section 11.8.

Term has the meaning set forth in Section 4.1.

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

UCC means the Uniform Commercial Code.

ARTICLE 2: **GENERAL TERMS AND CONDITIONS**

2.1 Capacity Supplier's Obligations to Provide Capacity

(a) At all times during the Delivery Period, subject to Section 2.7, each of the Capacity Suppliers shall deliver Capacity in an amount that is equal to the Capacity Resource Amount of such Capacity Supplier as described in Appendix A. Each Capacity Supplier shall be responsible for ensuring that such Capacity is deliverable to the PJM Balancing Authority at all times during the Delivery Period. A Capacity Supplier shall accomplish delivery of Capacity by submitting, or causing PJM to submit, a unit-specific transaction in the PJM eRPM system to transfer from the Capacity Supplier to the ATSI Utilities the Capacity for the Delivery Period.

(b) At all times during the Delivery Period, a Capacity Supplier may change its source of supply to Capacity Resource(s) that are different from its Capacity Resources set forth in Appendix A; provided that (i) any such nomination shall be made

in writing to the ATSI Utilities and PJM and shall demonstrate that the proposed new Capacity Resource(s) are fully deliverable (as described in Section 2.1(a)) to the PJM Balancing Authority for the remainder of the Delivery Period; (ii) PJM (in consultation with the ATSI Utilities) acknowledges and agrees that such proposed new Capacity Resources satisfy all of its requirements under the PJM Agreements and (iii) no such change to the Capacity Resource(s) shall be effective until the Capacity Supplier has submitted a revised Appendix A, in substantially the form attached hereto. Such revised Appendix A shall replace and supersede the existing Appendix A.

(c) Each Capacity Supplier's Capacity Resource Amount shall be committed exclusively to the ATSI Utilities for the delivery of Capacity during the Delivery Period and shall not be committed, obligated or operated in any manner such that it is not available to meet the Capacity Resource Amount to be delivered to the ATSI Utilities during the Delivery Period.

2.2 ATSI Utilities' Obligation to Purchase Capacity

During the Delivery Period, the ATSI Utilities shall pay an amount, as allocated in accordance with the Statements pursuant to Article 7 and based on the Price, for the Capacity provided by each Capacity Supplier pursuant to Section 2.1(a).

2.3 Capacity Resources

(a) Each Capacity Supplier shall deliver Capacity from Capacity Resources on a unit-specific basis as described in Appendix A or as provided in Section 2.1(b) and not through "slice of system" or similar arrangements or arrangements that are not unit-specific.

(b) On or prior to the commencement of the Delivery Period, each Capacity Supplier shall own or have the contractual authority to control the output or load reduction capability of the Capacity Resources it is relying on to meet its Capacity Resource Amount, in an amount equal to its Capacity Resource Amount.

(c) Capacity Suppliers that own or control the output of a Generation Capacity Resource that was committed in the FRR Integration Auction and that has not been rendered unavailable by a Generation Planned Outage, a Generator Maintenance Outage, or a Generation Forced Outage shall submit offers for the available capacity of such Generation Capacity Resource into PJM's Day-ahead Energy Market as described in and subject to the requirements of Section 1.10.1A(d) of Schedule 1 of the PJM Operating Agreement.

2.4 PJM Membership; PJM Protocols

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

(b) During the Delivery Period, each Capacity Supplier shall adhere at all times to all PJM-related protocols and requirements necessary to conduct business with respect to delivering Capacity to the PJM Balancing Authority.

(c) Each Capacity Supplier acknowledges and agrees that (i) it will be bound by the PJM Agreements and any other operating instructions, policies and procedures set forth by PJM; and (ii) it will reasonably cooperate with the ATSI Utilities and PJM so

that the ATSI Utilities will be in compliance with all PJM requirements and procedures related to the provision of Capacity by such Capacity Supplier under this Agreement.

2.5 Regulatory Authorizations; Governmental Directives

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

(b) Each Capacity Supplier shall reasonably cooperate in good faith with the ATSI Utilities in any regulatory compliance efforts as may be required by any Governmental Authority related to the provision of Capacity by such Capacity Supplier under this Agreement.

2.6 PJM Charges and Credits

(a) Each Capacity Supplier shall be responsible, at its sole cost and expense, for any and all Charges charged to the ATSI Utilities that are attributed to such Capacity Supplier's Capacity Resource and shall pay to the ATSI Utilities such Charges in accordance with Article 7.

(b) Each Capacity Supplier shall be entitled to receive any and all Credits credited to the ATSI Utilities attributed to such Capacity Supplier's Capacity Resource in accordance with Article 7; provided, however, that such Credits shall be netted against any Charges attributed to such Capacity Resource or any other Capacity Resource committed to the ATSI Utilities under this Agreement that are owned or controlled by such Capacity Supplier.

- (c) Charges and Credits shall be allocated hereunder as follows:
- (i) for purposes of determining Charges attributable to each Capacity Supplier, in the event Charges are billed to the ATSI Utilities by PJM on a net portfolio basis, the ATSI Utilities (in consultation with PJM) will identify the Capacity Suppliers responsible for the Charges (such determination to be made on the basis of the net performance of a Capacity Supplier's entire portfolio of Capacity Resources that is part of the ATSI Utilities' fixed resource requirement portfolio) and will allocate the Charges to such Capacity Suppliers on a pro rata basis based on the amount of the net deficiency per Capacity Supplier.
 - (ii) for purposes of determining Credits attributable to each Capacity Supplier, in the event Credits are credited to the ATSI Utilities by PJM on a net portfolio basis, the ATSI Utilities (in consultation with PJM) will identify the Capacity Suppliers responsible for the Credits (such determination to be made on the basis of the net performance of a Capacity Supplier's entire portfolio of Capacity Resources that is part of the ATSI Utilities' fixed resource requirement portfolio) and will allocate the Credits to such Capacity Suppliers on a pro rata basis based on the amount of the net over-performance per Capacity Supplier.
 - (iii) notwithstanding the foregoing, if Charges or Credits billed or credited to the ATSI Utilities by PJM are on an identifiable resource-specific basis, the ATSI Utilities will allocate the Charges or Credits, as applicable, to such Capacity Resource.

2.7 EFORd

If a Capacity Resource's EFORd, as determined by PJM on November 30, 2010, results in a Capacity Supplier's Capacity availability during the Delivery Period being less than the Capacity Supplier's Capacity cleared in the FRR Integration Auction (the "Capacity Shortfall"), the Capacity Supplier shall: (i) immediately communicate the same in writing to the ATSI Utilities (with a copy to PJM and the PJM Market Monitor); and (ii) be responsible for procuring additional Capacity equal to such Capacity Shortfall to fully satisfy its requirement pursuant to Section 2.1(a), provided, however, that a Capacity Supplier may elect to instead pay for any Charges resulting from such Capacity Shortfall, in accordance with Article 7, as long as such Charges, in the aggregate, do not exceed one-half (1/2) of the Performance Assurance Amount (the "Charges Limit"); and provided, further, that a Capacity Supplier may elect to post Additional Performance Assurance pursuant to Section 6.1(c), in which case, such Capacity Supplier may pay Charges, in the aggregate, equal to the lesser of: (y) the Performance Assurance Amount and (z) the sum of the Additional Performance Assurance and the Charges Limit.

2.8 Transmission Service

Each Capacity Supplier is responsible for any and all PJM transmission requirements, including costs and expenses associated therewith, necessary to perform its obligations under this Agreement.

ARTICLE 3: **REPRESENTATIONS AND WARRANTIES**

3.1 Capacity Supplier's Representations and Warranties

Each Capacity Supplier hereby represents and warrants to the ATSI Utilities as follows:

(a) it is (i) duly organized, validly existing and in good standing under the laws of its jurisdiction of organization and (ii) ~~is~~ duly registered and authorized to do business and ~~is~~ in good standing in all states in which it is required to be so qualified except, in the case of clause (ii), to the extent such failure does not adversely affect its ability to perform its obligations under this Agreement;

(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 Capacity 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 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 against it or any of its Affiliates, that could reasonably be expected to materially 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 and it 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; and

(k) it is knowledgeable and capable of adhering to all PJM-related protocols necessary to conduct business with respect to delivering an amount of Capacity to the

PJM Balancing Authority equal to its obligations under this Agreement, including but not limited to, the use of PJM's financial scheduling protocols.

3.2 ATSI Utilities' Representations and Warranties

Each of the ATSI Utilities hereby represents and warrants to the Capacity Suppliers as follows:

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

(b) it has all requisite power and authority to carry on the business to be conducted by it;

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

(d) this Agreement is the legal, valid and binding obligation of the applicable ATSI Utility, 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) 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;

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

(g) 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 materially 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, but in any event within three (3) Business Days after becoming aware of such breach, notify the other Parties in accordance with the notice provisions of Section 11.1, provided that if the notifying Party is a Capacity Supplier, the Capacity Supplier does not have to notify any other Capacity Supplier.

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 delivery of Capacity by Capacity Suppliers will commence on June 1, 2011 at 12:00:01 a.m. prevailing Eastern Time and end on May 31, 2012 at 11:59:59 p.m. prevailing Eastern Time.

4.2 Effect of Termination on Obligations; Survival

Termination of this Agreement, including Early Termination as between the ATSI Utilities and a Capacity Supplier for any reason, shall not relieve the ATSI Utilities or such Capacity Supplier of any obligation accruing on or prior to such termination. Any termination of this Agreement, including Early Termination, as between the ATSI Utilities and a Capacity Supplier, shall not relieve or otherwise affect the other Capacity Suppliers 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 termination or expiration of this Agreement shall so survive, including Articles 5, 8, 9, 10, and 11 and Sections 4.2, 6.3, 6.4 and 7.2(e), in accordance with the terms thereof, until such obligations are discharged.

4.3 Early Termination

This Agreement may be terminated as between the ATSI Utilities and a Capacity 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(a) (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) with respect to a Capacity Supplier, the failure to provide Performance Assurance pursuant to Section 6.1, or in the case of a Letter of Credit, such Performance Assurance terminates, expires or is not renewed and is not subsequently renewed or replaced (or substituted with cash) in accordance with Article 6;

(b) any representation or warranty made by the Defaulting Party herein is false or misleading in any respect when made and such breach of representation and warranty has, or could reasonably be expected to have, a material adverse effect on its ability to perform its obligations under this Agreement;

(c) the failure of the Defaulting Party to perform its obligations under Sections 2.3, 2.4, 2.5, 2.6(a), and 2.7 if such failure is not remedied within ten (10) Business Days after receipt of written notice of such failure from a Non-Defaulting Party;

(d) the failure of the Defaulting Party to provide the notification required pursuant to Section 3.3;

(e) the failure of a Capacity Supplier to perform its obligations under Section 2.1 and such failure is not remedied within ten (10) Business Days after receipt of written notice of such failure from the ATSI Utilities;

(f) the failure of the ATSI Utilities to perform their respective payment obligations under this Agreement if such failure is not remedied within thirty (30) days after receipt of written notice of such failure from the applicable Capacity Supplier;

(g) PJM has declared the Defaulting Party to be in default of any provision of any PJM Agreement or any PJM Manual, which default has a material adverse effect on its ability to perform its obligations hereunder, if such failure is not remedied within ten

(10) Business Days after receipt of written notice of such default from a Non-Defaulting Party; and

(h) the Defaulting Party becomes Bankrupt.

5.2 Rights Upon and Event of Default

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

(a) 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) days after such notice is effective;

(b) 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;

(c) 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;

(d) draw down, liquidate, set-off against, or demand payment under, any Performance Assurance; and

(e) 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 to the applicable Non-Defaulting Party 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(a), 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, 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 and actually received, liquidated and retained by the Non-Defaulting Party, plus any and all other amounts due to the Defaulting Party

under this Agreement or any other agreement between the Non-Defaulting Party and the Defaulting Party, and (ii) the sum of the Settlement Amount under this Agreement payable to the Non-Defaulting Party, 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 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. The Termination Payment will be due to or due from the Non-Defaulting Party as appropriate; provided, however, that if a Capacity Supplier is the Defaulting Party and the Termination Payment is due to such Capacity Supplier, the ATSI Utilities 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 Capacity Supplier as Default Damages; and further provided that any previously attached security interest of the ATSI Utilities in such retained amounts will continue; and further provided that if the ATSI Utilities are the Defaulting Party and the Termination Payment is due to the ATSI Utilities, the Capacity Supplier 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 ATSI Utilities as Default Damages. If the Termination Payment has been retained by the Non-Defaulting Party as security for additional amounts that may be determined to be due and owing by the Defaulting Party (as described above), 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 Defaulting Party, the Non-Defaulting Party will

pay simple interest on the Termination Payment amount being made to the Defaulting Party for the period of such retention, 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 ten (10) 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 ten (10) 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 8; 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 Step-up Provision

If a Capacity Supplier defaults in its obligations hereunder resulting in the exercise of the right of Early Termination by the ATSI Utilities with respect to such Capacity Supplier, then the ATSI Utilities may offer one or more of the non-defaulting Capacity Suppliers the right to assume under this Agreement additional obligations to supply Megawatts of Capacity, subject to further compliance with this Agreement, including Articles 2 and 6. The provision of any such offer by the ATSI Utilities to non-defaulting Capacity Suppliers shall indicate the duration of the offer and the manner of acceptance thereof. Following the assumption by a Capacity Supplier of an obligation to supply additional Megawatts of Capacity hereunder, such Capacity Supplier and the ATSI Utilities shall execute an amendment to this Agreement modifying Appendix A to reflect the revised Capacity Resource Amount of the non-defaulting Capacity Supplier accepting such offer. A Capacity Supplier will not suffer any prejudice under this Agreement or otherwise arising from its election to decline an offer to assume an obligation to provide additional Megawatts of Capacity upon the default of another Capacity Supplier.

5.5 Set-off of Payment Obligations of the Non-Defaulting Party

Any payment obligations of the Non-Defaulting Party to the Defaulting Party pursuant to this 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 that are unsecured; and (ii) second, to satisfy any remaining payment obligations of the Defaulting Party to the Non-Defaulting Party pursuant to this Agreement.

5.6 Preservation of Rights of Non-Defaulting Party

The rights of the Non-Defaulting Party under this Agreement, including Sections 5.2, 5.3 and 5.5, will be supplemental to, and not in lieu of, any right of recoupment, lien, or set-off afforded by applicable law, and all such rights are expressly preserved for the benefit of the Non-Defaulting Party.

ARTICLE 6: **PERFORMANCE ASSURANCE**

6.1 Performance Assurance Calculation

(a) Subject to Section 6.1(b), each Capacity Supplier shall post Performance Assurance within three (3) Business Days 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 6.4, to the Capacity Supplier within ten (10) Business Days of the expiration of the Delivery Period. The Performance Assurance for each Capacity Supplier shall be calculated as follows: the Capacity Supplier's Capacity Resource Amount (in Megawatts) multiplied by the Price multiplied by twenty-one days multiplied by 1.2 (the "Performance Assurance Amount").

(b) If a Capacity Supplier is rated at least "BBB-" by S&P or "Baa3" by Moody's, as such rating is set forth on its Credit Representative and Information Form, such Capacity Supplier shall not be required to post Performance Assurance under this Article 6; provided, however, if such Capacity Supplier's credit rating falls below "BBB-" by S&P or "Baa3" by Moody's at any time during the Term, then such Capacity

Supplier shall post Performance Assurance within three (3) Business Days of such downgraded credit rating in accordance with Section 6.1(a).

(c) Each Capacity Supplier may elect to post Additional Performance Assurance at any time prior to November 30, 2010. The ATSI Utilities will hold the Additional Performance Assurance through the end of the Delivery Period and shall return such Additional Performance Assurance, along with, in the case of cash, any interest thereon calculated in accordance with Section 6.4, to the Capacity Supplier within ten (10) Business Days of the expiration of the Delivery Period.

6.2 Acceptable Forms of Security

At each Capacity Supplier'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, in substantially the form attached hereto as Appendix B.

If the ATSI Utilities receive notice from the issuing financial institution that the Letter of Credit is being cancelled or terminated prior to its stated expiration date, the Capacity Supplier will be required to provide either (a) cash credited to a deposit account of the ATSI Utilities or (b) a substitute Letter of Credit from an alternative bank satisfying the minimum credit rating set forth in the definition of "Letter of Credit." If posting a substitute Letter of Credit, the receipt of the substitute Letter of Credit must be effective as of the date of cancellation or termination and delivered to the ATSI Utilities at least thirty (30) days before the cancellation or termination date of the original Letter of Credit. If delivering cash, the cash must be credited to a deposit account of the ATSI

Utilities at least thirty (30) days before the cancellation or termination date of the original Letter of Credit. If the Capacity Supplier fails to supply a substitute Letter of Credit or cash, as the case may be, as required pursuant to this Section 6.2(b), 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 Capacity Supplier has obtained a Letter of Credit falls below the levels set forth in the definition of "Letter of Credit," the Capacity Supplier 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, either (a) provide cash credited to a deposit account of the ATSI Utilities or (b) 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 the ATSI Utilities. If the Capacity Supplier fails to supply a substitute Letter of Credit or cash, as the case may be, as required pursuant to this Section 6.2(b), 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.

6.3 Grant of Security Interest; Remedies

To secure its obligations under this Agreement, each Capacity Supplier hereby grants to the ATSI Utilities a present and continuing security interest in, and lien on (and

right of set-off 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 Capacity Supplier (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 Capacity Supplier 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 set-off 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 an Event of Default where a Capacity Supplier is the Defaulting Party or the declaration of an Early Termination Date by the ATSI Utilities pursuant to Section 4.3, 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 of such defaulting Capacity Supplier 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 Capacity Supplier and (ii) draw on any outstanding Letter of Credit provided by such defaulting Capacity Supplier. The ATSI Utilities will apply the proceeds of the Performance Assurance realized upon the exercise of such rights or remedies to reduce such defaulting Capacity Supplier's obligation under this Agreement, and such defaulting Capacity Supplier 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 11.1.

6.4 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 7: BILLING AND SETTLEMENT

7.1 Settlement

(a) Billing and settlement under this Agreement will be administered by the ATSI Utilities.

(b) Within six (6) Business Days of the end of each Billing Month, the ATSI Utilities will issue a statement (a "Statement") to the Capacity Supplier for the Invoice Amount and any amount owing from the Capacity Supplier to the ATSI Utilities under the Agreement.

7.2 Payment

The ATSI Utilities will make payment to each Capacity Supplier (or, if the net amount of the Statement requires a payment from the Capacity Supplier, the applicable Capacity Supplier will make payment to the ATSI Utilities) within nineteen (19) days of the end of each Billing Month by electronic transfer to a bank designated by the Capacity Supplier (or the ATSI Utilities, as the case may be).

(a) Payments of the net amount of each Statement shall be made in immediately available funds, without deductions, set-off (subject to Sections 5.2(c), 5.2(d), 5.5 and 5.6) or counterclaims on the date on which such payment is due.

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

(c) If a good faith dispute arises between the ATSI Utilities and a Capacity Supplier regarding a Statement, the relevant Parties will pay the undisputed amount when due. Statement disputes must be addressed promptly, and in accordance with the dispute resolution procedures set forth in Article 8. Upon resolution of a Statement dispute, any exchange of funds as a result of the dispute between the ATSI Utilities and such Capacity Supplier 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.

(d) If payment is made after the due date shown on the Statement, a late fee will be added to the undisputed unpaid balance until 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.

(e) In the event of a good faith dispute regarding any Statement, each Capacity 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 ATSI Utility. 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.

(f) Notwithstanding anything to the contrary contained in this Section 7.2, 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.

ARTICLE 8: **DISPUTE RESOLUTION; SUBMISSION TO JURISDICTION**

8.1 Negotiation

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or validity thereof (“Dispute”) shall be subject to the dispute resolution procedures specified in this Article 8. 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 8.1 before commencing litigation under Section 8.2. 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 11.1, 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 reason 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 8.2. Any amounts that are owed by one Party to another Party as a result of resolution of a Dispute pursuant to this Section 8.1 shall be paid within two (2) Business Days of such resolution and the payment shall include interest calculated at the lower of the Interest Index or six percent (6%) per annum payable from the original due date through the date of payment.

8.2 Formal Dispute Resolution

All Disputes between the Parties that are not resolved in accordance with Section 8.1 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 court(s) including without limitation objections by reason of lack of personal jurisdiction, improper venue or inconvenient forum.

ARTICLE 9: LIMITATION OF LIABILITY

Except to the extent expressly set forth in this Agreement, including Article 10, as between the ATSI Utilities and each Capacity 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 except for Costs and Charges, 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 Capacity Supplier to any other Capacity Supplier, except as provided in Article 10.

ARTICLE 10: INDEMNIFICATION

10.1 Indemnification

(a) Each Capacity Supplier 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 any and all third-party (including PJM and each other Capacity Supplier) 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 Capacity Supplier with respect to an obligation arising under or in connection with this Agreement, or for which such Capacity Supplier 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 the ATSI Utilities.

(b) The ATSI Utilities must defend (at the option of the Indemnified Supplier), indemnify and hold harmless each Capacity Supplier (the "Indemnified Supplier"), its shareholders, board members, directors, officers, employees, agents and attorneys from and against any and all third-party (including another Capacity Supplier) 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 the ATSI Utilities with respect to an obligation arising under or in connection with this Agreement, or for which any of the ATSI Utilities 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 the Indemnified Supplier.

(c) The obligation of a Party to defend, indemnify, and hold harmless another Party under this Article [10](#) 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.

(d) If a Party intends to seek indemnification under Sections 10.1(a) or 10.1(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 ATSI Utilities (for an indemnification under Section 10.1(a)) or the indemnified Parties involved (for an indemnification under Section 10.1(b)); provided, however, such consent shall not be

unreasonably withheld or delayed. The indemnified Party shall have the right to participate in the defense or settlement of any such claim and shall cooperate in good faith with the indemnifying Party in its defense or settlement.

ARTICLE 11: MISCELLANEOUS PROVISIONS

11.1 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 Capacity Supplier:

Notification information for each Capacity Supplier is set forth on Appendix A.

If to the ATSI Utilities:

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

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
Email: dstathis@firstenergycorp.com

Copy to:

Morgan E. Parke, Esq.
FirstEnergy Corp.

3/10/2010

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

In the case of all notices required under Article 6, 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
Email: 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
Email: 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
Email: 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 a Business Day will be deemed received on the next Business Day. Notice by email or facsimile transmission will be

35.....DeltaView comparison of pcdocs://wassr01a/1012109/3 and pcdocs://wassr01a/1012109/3a. Performed on 3/11/2010.

deemed to have been received by the recipient on the date the recipient confirms receipt either orally or in writing.

11.2 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.

11.3 Assignment

(a) The ATSI Utilities may assign this Agreement or their rights or obligations hereunder (i) to an entity that has a senior debt rating (or if no senior debt rating is available, a corporate issuer rating) assigned by Moody's, S&P or Fitch of no lower than that of the highest rated of the ATSI Utilities as of the Effective Date, or (ii) to an entity that merges with, acquires direct or indirect control of, or purchases substantially all of the assets of, the ATSI Utilities, in each case without the prior written consent of the Capacity Suppliers. The ATSI Utilities shall notify PJM and the PJM Market Monitor of any assignment it makes under this Section 11.3(a).

(b) A Capacity Supplier may not assign this Agreement or its rights or obligations hereunder without the prior written consent of the ATSI Utilities, which consent may not be unreasonably withheld. No assignment hereunder will be effective

until (i) the Capacity Supplier and the assignee have provided to the ATSI Utilities an executed Assignment and Assumption Agreement and (ii) if the assignee does not meet the credit requirements set forth in Section 6.1(b), the assignee has provided the Performance Assurance required under Article 6. Notwithstanding anything in this Section 11.3(b) to the contrary, a Capacity Supplier may, without the consent of the ATSI Utilities (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~~such collateral assignment foreclose or otherwise exercise remedies against the Capacity Supplier, such lenders may not transfer, pledge or assign this Agreement to a Person who does not meet the credit rating requirements contained in Section 6.1(b) and such Person must provide to the ATSI Utilities an executed Assignment and Assumption Agreement. For the avoidance of doubt, a Capacity Supplier is not required to obtain the consent of any other Capacity Supplier under this Section 11.3. Each Capacity Supplier shall notify PJM and the PJM Market Monitor of any assignment it makes under this Section 11.3(b).

11.4 Governing Law and Venue

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.

11.5 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.

11.6 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.

11.7 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.

11.8 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 payment for Capacity by the ATSI Utilities under this Agreement (collectively, the "Taxes") will be the liability of the ATSI Utilities. The ATSI Utilities 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 ATSI Utility will, if requested, provide the Capacity Supplier with valid tax exemption certificates. Should the Capacity Suppliers be required to remit any Taxes directly to any applicable taxing authority, the ATSI Utilities will defend and indemnify such Capacity Suppliers and will pay to such Capacity Suppliers 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 Capacity 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.

11.9 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, the preamble and the recitals are, unless the context indicates otherwise, references to Articles, Sections, Appendices, the preamble and the recitals of this Agreement;
- (e) except as otherwise provided in this Agreement, any reference to laws, rules, regulations, ordinances or decrees in this Agreement shall mean such law, rules, regulations, ordinances and decrees as may be amended, modified, replaced, codified or superseded from time to time; and
- (f) this Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the Parties (or any of them), or to impose any partnership obligation or liability upon any Party.

11.10 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 PJM, the PJM Market Monitor, or any federal, state or local agency or by a court of competent jurisdiction, provided that the disclosing Party, at the request and cost of the other 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, lenders 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 11.10, 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) 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 11.10.

(c) 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 11.10. 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 11.10, 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.

11.11 Amendment

Except as provided in Sections 2.1(b) and 5.4, 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 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, 128 S. Ct. 2733 (2008).

11.12 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. The ATSI Utilities shall give each Capacity Supplier thirty (30) days prior written notice before the appointment of an agent.

11.13 Counterparts

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

3/10/2010

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:

[CAPACITY SUPPLIER SIGNATURES APPEAR ON SUCCEEDING PAGES]

3/10/2010

[CAPACITY SUPPLIER]

By: _____

Name:

Title:

APPENDIX A¹

CAPACITY RESOURCE AMOUNT AND NOTICE ADDRESSES

Capacity Supplier: _____

| <u>Total</u> | Capacity Resource Amount (MW) | Price (\$/MW-day) | Capacity Resource |
|--------------|-------------------------------|-------------------|-------------------|
| | | | |
| | | | |
| | | | |

Delivery Period: June 1, 2011, 12:00:01 A.M. through May 31, 2012.

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: Name:
 Address: Address:

Telephone: Telephone:
 -
 Facsimile: Facsimile:
 -
 E-mail: E-mail:

2. In the case of all notices required under Article 6, if different from the contact information above:

- Name:
- Address:
- Telephone:

~~¹ Appendix A to be completed for each Capacity Supplier and appended to this Agreement. No Capacity Supplier will see another Capacity Supplier's Appendix A.~~

~~Facsimile:~~

~~E-mail:~~

copy to:

Name: Name:

Address: Address:

Telephone:

- Telephone:

Facsimile:

- Facsimile:

E-mail: E-mail:

[CAPACITY SUPPLIER]

BY: _____
Name:
Title:

APPENDIX B

FORM OF CAPACITY SUPPLIERS' 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 on [~~_____~~, 2012] [(i) *the date that is 364 days from date issuance²¹* or (ii) *the date that is 10 days from the date of the expiration of the Delivery Period*] or any extension thereof, 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 by [*insert name of Capacity Supplier*] under that certain Capacity Purchase and Sale Agreement between the Applicant and you, dated March [], 2010 (the “Agreement”), or if you receive notice from us that this Letter of Credit is being

²¹ A Letter of Credit expiring 364 days from the date of issuance will be subject to the automatic renewal provisions herein.

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 another form of Performance Assurance expressly permitted under the Agreement.

3. A partial or full drawing hereunder may be made by you on any Business Day on or prior to the expiration of this Letter of Credit by delivering, by no later than 11:00 A.M. (Eastern Standard Time³²) 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, amend our Letter of Credit per your request in an Availability Certificate in the form of Annex 3 hereto by you to us 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 amend our Letter of Credit, we shall issue our amendment 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

³² 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.

your account at such bank in the United States as you may specify in your draft delivered to us pursuant to Paragraph 3 hereof, by 3:00 P.M. (Eastern Standard Time) on the date of such drawing, if delivery of this requisite document is made prior to 11:00 A.M. (Eastern Standard Time) on a Business Day pursuant to Paragraph 3 herein above, but at the opening of business on the first Business Day next succeeding the date of such drawing if delivery of the requisite document is made after 11:00 A.M. (Eastern Standard 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 therefor 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 prior to the expiration date 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 and payment by us of the drawings in an amount equal to the maximum amount available to be made hereunder; or (ii) the date we receive from you a Certificate of Expiration in the form

of Annex 4 hereto [, or (iii) [f_____}], 2012] [*the date that is ten (10) days after the expiration of the Delivery Period*]]. This Letter of Credit will [be automatically extended without written amendment for successive additional one-year periods from the current or any future extended expiry date][remain in effect until at least ten (10) days after the expiration of the Delivery Period], unless at least ninety (90) days prior to such date of expiration or non-renewal of the Letter of Credit, 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 will [terminate the Letter of Credit] [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 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 transferable, in accordance with Annex 5, to an entity certified by you to us substantially in the form of Annex 5. 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 (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 5 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. In the event of a full and final drawing, the original Letter of Credit must be returned to us via overnight courier at time of fax presentation.
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 _____. In the event of a full or final drawing, the original Letter of Credit must be returned to us via overnight courier at time of fax presentation.
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) 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 Beneficiaries 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 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 must be signed by an Authorized Officer of each of the Beneficiaries.

3/10/2010

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 by [*insert name of Capacity Supplier*] under the Capacity Purchase and Sale Agreement between the Applicant and us, 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.

3/10/2010

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:

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:

3/10/2010

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 an amendment to the above-referenced Letter of Credit to decrease the amount by \$_____ to the new aggregate amount of \$_____ (the "New Amount").

Please acknowledge your intention to amend the Letter of Credit in the New Amount 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:
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 original Letter of Credit and all amendments attached thereto, 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 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 original of such Letter of Credit and all amendments thereto are 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

The Toledo Edison Company

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date:

Ohio Edison Company

Pennsylvania Power Company

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date:

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

(Name of authenticating party)

(Authorized signature of authenticating party)

Name:

Title:

APPENDIX C**FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Assignment and Assumption Agreement (this “Agreement”), dated as of [], 20[] (the “Effective Date”), is entered into by and between [], a [State] [corporation] (the “Assignor”), and [], a [State] [corporation] (the “Assignee”).

WHEREAS, the Assignor is party to that certain Agreement between the ATSI Utilities and each Capacity Supplier (as defined therein) set forth in Appendix A thereto (the “Capacity Purchase and Sale Agreement”), dated as of March[], ~~2010~~2010 and for the ~~{2011-12}~~ Delivery Period (capitalized terms used in this Agreement, but not defined herein, shall have the meanings given to such terms in the Capacity Purchase and Sale Agreement);

WHEREAS, pursuant to Section 11.3 of the Capacity Purchase and Sale Agreement, the Assignor wishes to assign all of its rights and obligations under the Capacity Purchase and Sale Agreement, including all of its obligations thereunder arising prior to the Effective Date, to the Assignee on the terms and conditions set forth herein and such Assignee wishes to accept such assignment.

NOW, THEREFORE, in consideration of the foregoing and the mutual premises, covenants and warranties made in this Agreement and of the mutual benefits to be derived therefrom, the parties hereto agree as follows:

SECTION 1. Assignment. On and subject to the terms and conditions of this Agreement and in accordance with Section 11.3 of the Capacity Purchase and Sale Agreement, the Assignor hereby assigns, transfers, conveys and delivers all of its rights and obligations under the Capacity Purchase and Sale Agreement to the Assignee, including all of its rights and obligations thereunder arising prior to the Effective Date and, for the benefit of the Assignor and the ATSI Utilities, the Assignee hereby accepts such assignment, assumes such obligations and agrees to be bound by the terms of the Agreement.

SECTION 2. Performance Assurance. As a condition precedent to the effectiveness of this Agreement, the Assignee has delivered to the ATSI Utilities the Performance Assurance ~~required under~~pursuant to Article 6 of the Capacity Purchase and Sale Agreement, if required thereunder.

SECTION 3. Further Assurance. Each of the parties to this Agreement agrees that at any time and from time to time, it shall promptly and duly execute and deliver any and all such further instruments and documents and take such further action as may reasonably be necessary in order to give full effect to this Agreement and of the rights and powers herein granted.

SECTION 4. Amendment. This Agreement may be changed, modified or terminated only by an instrument in writing signed by each of the parties hereto.

3/10/2010

SECTION 5. Counterparts. This Agreement may be executed and delivered (including via facsimile) in several counterparts, each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

SECTION 6. Governing Law. THIS AGREEMENT AND ANY DISPUTE OR CLAIM OF WHATEVER NATURE ARISING OUT OF OR IN CONNECTION WITH IT SHALL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAW OF THE STATE OF OHIO, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS.

SECTION 7. Successors and Assigns. This Agreement will be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and assigns.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

3/10/2010

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

[ASSIGNOR]

By: _____
Name:
Title:

[ASSIGNEE]

By: _____
Name:
Title:

Document comparison done by DeltaView on Thursday, March 11, 2010 3:07:58 PM

| Input: | |
|---------------|---|
| Document 1 | pcdocs://wassr01a/1012109/3 |
| Document 2 | pcdocs://wassr01a/1012109/3a |
| Rendering set | Option 3a strikethrough double score no moves |

| Legend: | |
|---------------------------|--|
| <u>Insertion</u> | |
| Deletion | |
| < Moved from > | |
| > <u>Moved to</u> < | |
| Style change | |
| Format change | |
| Moved deletion | |
| Inserted cell | |
| Deleted cell | |
| Moved cell | |
| Split/Merged cell | |
| Padding cell | |

| Statistics: | |
|----------------|-------|
| | Count |
| Insertions | 28 |
| Deletions | 30 |
| Moved from | 0 |
| Moved to | 0 |
| Style change | 0 |
| Format changed | 0 |
| Total changes | 58 |