

**CUSTOMER AGREEMENT TO PURCHASE STANDARD SERVICE OFFER  
GENERATION SERVICE FROM A COMPETITIVE RETAIL ELECTRIC  
SERVICE PROVIDER THROUGH DECEMBER 31, 2011**

This AGREEMENT CONFIRMS THAT \_\_\_\_\_  
(Customer) SHALL PURCHASE STANDARD SERVICE OFFER GENERATION SERVICE FROM A COMPETITIVE RETAIL ELECTRIC SERVICE PROVIDER THROUGH DECEMBER 31, 2011 (AGREEMENT), made and entered into on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between Duke Energy Ohio, Inc. (Company), and Customer, is an electric service agreement affecting the conditions pursuant to which Customer may take electric service under the Electric Security Plan tariffs of the Company on file at, and approved by, the Public Utilities Commission of Ohio. The Company and the Customer are sometimes herein referred to collectively as the Parties.

WITNESSETH:

WHEREAS, the Customer intends to purchase competitive retail electric generation service from an entity other than the Company through December 31, 2011; and

WHEREAS, the Company must plan to serve its generation load during the electric security plan period established by the Public Utilities Commission of Ohio in case no. 08-923-EL-ATA; and

WHEREAS, the Company's Retail Tariff for Electric Choice Participants provides that the Customer may not avoid the System Reliability Tracker (SRT) charges and receive a shopping credit (Rider SC) unless it presents the Company with a copy of an executed contract to purchase firm generation service with a competitive retail electric service provider through December 31, 2011, and the Customer agrees not to purchase firm generation service from the Company through December 31, 2011, or in the absence of an executed contract with a competitive retail electric service provider, the Customer agrees not to purchase firm generation service from the Company through December 31, 2011;

NOW, THEREFORE, the Parties hereto agree as follows:

I. DEFINITIONS

1.1 Certain Defined Terms. For all purposes of this Agreement, except as otherwise expressly provided herein or unless the context otherwise requires, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

1.2. Competitive Retail Electric Service. Competitive Retail Electric Service has the meaning set forth in division (A)(4) of section

4928.01 of the Revised Code, and includes the services provided by retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.

1.3. Competitive Retail Electric Service provider (CRES provider). CRES provider means a person or entity, under certification by the commission, who supplies or offers to supply a competitive retail electric service and includes the services provided by retail electric generation providers, power marketers, power brokers, aggregators, and governmental aggregators.

1.4. Consumer. Consumer means a person who uses a competitive retail electric service.

1.5. Customer. Customer means a person who contracts with or is solicited by a competitive retail electric service provider for the provision of a competitive retail electric service and currently purchases competitive retail electric service from the Company.

1.6. Governmental Approvals. Governmental Approvals means all consents, approvals, authorizations, orders, registrations or qualifications of any Person or public authority as may be required by any appropriate regulatory authority necessary to enter and enforce this Agreement.

1.7. Person. Person means any natural person, corporation, company, voluntary association, partnership, joint venture, trust (including a business trust), unincorporated organization or government (or any agency, instrumentality or political subdivision thereof).

1.8. Retail electric generation service. Retail electric generation service means the provision of electric power to a retail customer in this state through facilities provided by an electric distribution utility and/or a transmission entity in this state. The term encompasses the services performed by retail electric generation providers, power marketers, and power brokers.

1.9. Termination Date. Termination Date means the first day of the Customer's billing cycle subsequent to written notification of the termination of this Agreement by the Company to the Customer but not earlier than December 31, 2011 unless the stipulation approved by the Public Utilities Commission of Ohio is altered or terminated prior to that date.

## II. OBLIGATIONS OF THE PARTIES

2.1. Customer Obligations. The Customer shall evidence and commit, by signing this Agreement, that it has entered into a contract with a CRES provider for firm retail electric generation service for the Company account number(s) and from the effective date(s) shown in Appendix A of this Agreement, through at least December 31, 2011, and/or commits, by signing this Agreement, that the Customer shall not purchase retail electric generation service from the Company through at least December 31, 2011 for the account number(s) in Appendix A listed with effective date(s).

2.1.1. The Customer must provide a minimum 60-day notice to Company of the effective date of the contract with a competitive retail electric service provider to avoid the SRT and receive a shopping credit (Rider SC) thereafter. Such notice must include each Company account number for each account associated with this Agreement.

2.1.2. If, prior to the termination date of this Agreement, the Customer purchases retail electric generation service from the Company for any reason, including but not limited to, the termination or default of its contract with its CRES provider, or an inability to contract with a CRES provider, the Customer agrees to pay the Company for retail electric generation service 115% of the Standard Service Offer generation-related charges in the applicable Electric Security Plan rate sheet.

2.1.3 The Customer agrees and warrants that it has the legal authority to enter this Agreement.

2.2. Company Obligations. The Company shall not charge Rider SRT and will provide a shopping credit (Rider SC) as approved by the Public Utilities Commission in case no. 08-923-EL-ATA.

2.2.1. The Company shall maintain capacity for the benefit of all consumers, including the Customer, pursuant to the terms and conditions of the stipulation and tariffs approved by the Public Utilities Commission of Ohio in case no. 08-923-EL-ATA.

2.2.2. If, during the term of this Agreement, the Customer, for any reason, must purchase retail electric generation service from the Company, subject to the availability of capacity pursuant to paragraph 2.2.1 of this Agreement, the Company shall sell to the Customer retail electric generation service at 115% of the Standard Service Offer generation-related charges in the applicable Electric Security Plan rate sheet.

2.2.3. The Company agrees and warrants that it has received all regulatory approvals such that it may legally enter this Agreement.

### III. INDEMNIFICATION

#### 3.1. Indemnities by the Customer.

(a) Without prejudice to any other rights that Company may have hereunder or under applicable law, the Customer hereby agrees to indemnify and save harmless the Company from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable attorneys fees and disbursements) arising out of or resulting from the material breach of any representation or covenant of the Customer and its agents, employees, or assignees, under this Agreement.

(b) Notwithstanding any other provision of this Agreement, and in furtherance and not in limitation of the foregoing, the Customer agrees to pay to the Company upon demand any and all reasonable amounts necessary to indemnify it and save it harmless from and against any and all damages, losses, claims, liabilities or expenses (including reasonable attorneys, fees and disbursements) awarded against or incurred by it arising out of or as a result of:

(i) The Company's reliance on any representation or warranty made by or on behalf of the Customer under or in connection with this Agreement, which shall have been false or incorrect in any material respect when made or deemed made;

(ii) The failure by the Customer to comply with any applicable law, rule or regulation;

(iii) Any failure by the Customer to maintain a contract for retail electric generation service with a CRES provider that is duly qualified to do business, and in good standing, in every jurisdiction where such qualification is required hereunder for the provision of competitive retail electric service to the Customer.

#### 3.2. Indemnities by the Company.

(a) Without prejudice to any other rights that the Customer may have hereunder or under applicable law, the Company hereby agrees to indemnify and save harmless the Customer from and against any and all damages, losses, claims, liabilities, costs and expenses (including reasonable attorneys fees and disbursements) arising out of or resulting from the material breach of any representation or covenant of the Company and its agents, employees, or assignees, under this Agreement.

(b) Notwithstanding any other provision of this Agreement, and in furtherance and not in limitation of the foregoing, the

Company agrees to pay to the Customer upon demand any and all amounts necessary to indemnify it and save it harmless from and against any and all damages, losses, claims, liabilities or expenses (including reasonable attorneys, fees and disbursements) awarded against or incurred by it arising out of or as a result of:

(i) The Customer's reliance on any representation or warranty made by or on behalf of the Company under or in connection with this Agreement, which shall have been false or incorrect in any material respect when made or deemed made;

(ii) The failure by the Company to comply with any applicable law, rule or regulation;

(iii) Any failure by the Company to be duly qualified to do business, and to be in good standing, in every jurisdiction where such qualification is required hereunder.

3.3. Potential Liabilities. Each Party hereto will use commercially reasonable efforts to identify situations involving possible liability or obligations under this Article III (other than Section 3.1(b) and 3.2(b) hereof) and to determine the amount of any such liability or obligations, and, upon having notice of such situations, it will promptly advise the other Party thereof.

3.4. Cooperation in Litigation. Each Party hereto agrees to reasonably assist, at the request of the other Party, in any action, suit or proceeding brought by or against either Party by a third party relating to any of the transactions contemplated by this Agreement. The Party requesting assistance should reimburse the other Party for all extraordinary costs that arise from such request.

IV. MISCELLANEOUS

4.1. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, nor consent to any departure by either Party herefrom or therefrom, shall in any event be effective unless the same be in writing and signed by the other Party hereto, then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it is given.

4.2. Notices, Etc. All notices and other communications required or permitted hereunder shall, unless otherwise stated herein, be in writing and mailed or delivered, as to each Party hereto, at such Party's address specified below:

(a) If to Company:

139 E Fourth Street  
EY575  
Cincinnati, OH 45202

Attn: Certified Supplier Business Center

Telephone: 513-287-2322

Facsimile: 513-287-2718

Internet e-mail:  
csbc@duke-energy.com

(b) If to Customer:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

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

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Internet e-mail: \_\_\_\_\_

(c) or at such other address as shall be designated by such Party in a written notice to the other Party hereto. All such notices and communications shall be deemed to have been duly given when delivered to the addressees at the appropriate addresses specified above.

4.3. No Waiver; Remedies. No failure on the part of either Party hereto to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

4.4. Binding Effect. This Agreement shall be binding upon and inure to the benefit of Company and the Customer, and their respective successors and assigns, except that the Customer may not assign its rights or obligations hereunder without the prior written consent of Company, which consent shall not be unreasonably withheld. The Company may assign its rights or obligations hereunder without the consent of the Customer.

4.5. Costs, Expenses and Taxes. In addition to the rights of indemnification granted to Company under Article III hereof, the Customer shall reimburse the Company for all reasonable costs and expenses, if any (including reasonable attorneys fees and expenses), in connection with the negotiation, review, preparation, amendment, enforcement and release of this Agreement.

4.6. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by the Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

4.7. Severability Clause. Any provisions of this Agreement that are prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

4.8. No Petition: Set-Off. The Customer hereby irrevocably and unconditionally waives all right of set-off that it may have under contract (including this Agreement), applicable law or otherwise with respect to any property, funds or monies of Company at any time held by or in the possession of the Customer.

4.9. Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers hereto duly authorized, as of the date first above written.

Customer

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

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

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

Company

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

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

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

**Appendix A to the Customer Agreement**

Customer shall list below each account number(s) and the effective date(s), subject to the Customer Agreement dated \_\_\_\_\_. Only those account number(s) listed shall be subject to the Customer Agreement. The effective date must be the Company’s regularly scheduled meter reading date that occurs no less than 60-days from the date of the Company receiving the Waiver Notification Form from Customer.

<b>Account Number</b>	<b>Requested Effective Date</b>