

DUKE ENERGY OHIO, INC.
GAS SUPPLY AGGREGATION/CUSTOMER POOLING AGREEMENT
ASSOCIATED WITH FIRM TRANSPORTATION PROGRAM

This Agreement is made and entered into this _____ day of _____, 2007, between Duke Energy Ohio, Inc., an Ohio corporation, 139 East Fourth Street, Cincinnati, Ohio 45202, hereinafter "Company", and _____, a(an) _____ corporation, _____, hereinafter "Supplier."

WHEREAS, Supplier has secured firm supplies of natural gas which it intends to supply and sell on a firm, full gas requirements basis to gas Customers located on the Company's system, all within the parameters established by the Company for its Firm Gas Transportation Program (Rates FT and RFT).

WHEREAS, Company is willing and able, pursuant to the terms of this Agreement, to accept gas delivered into its city gate receipt points by Supplier and to redeliver such gas supplies to Supplier's aggregated pool of Customers, all of whom have elected firm transportation service from the Company under its firm gas transportation services tariffs, Rate FT and RFT.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Agreement, Company agrees to permit aggregations/pooling services and Supplier hereby agrees to aggregate natural gas supplies for all aggregations/pools served under this Agreement in accordance with the following terms and conditions:

ARTICLE I
Definitions

For purposes of interpreting this Agreement the following definitions shall apply:

1. Adjusted MDQ. "Adjusted MDQ" means the Supplier's MDQ less the Company's winter propane percentage, representing the Pool's allocation of the Company's propane peaking supplies.
2. Adjusted Target Supply Quantities. "Adjusted Target Supply Quantities", or "ATSQ", is defined as the Target Supply Quantities plus or minus any adjustments that the Company may require the Supplier to make to its daily deliveries (i.e., Annual Reconciliation volumes) plus the daily firm (Rate FT) requirements of all Customers being served by the Supplier under Rate IT.
3. Commission. "Commission" means the Public Utilities Commission of Ohio.
4. Company. "Company" means Duke Energy Ohio.
5. Customer(s). "Customer(s)" means a residential or non-mercantile recipient of transportation services provided by the Company under its Rates FT and RFT, which secures its supply of gas from Supplier.
6. Maximum Daily Quantities. "Maximum Daily Quantities", or "MDQ", means the expected natural gas usage for a Supplier's Pool of Customers on the Company's system design peak day.
7. Mercantile Customer. "Mercantile Customer" has the meaning set out in division (L) of section 4929.01 of the Ohio Revised Code. In summary, it means a Customer that consumes, other than for residential use: 1) more than 5,000 Ccf of natural gas per year at a single location or as part of an undertaking having more than 3 locations within or outside the state, and 2) that has not filed a declaration with the PUCO.
8. Negative Imbalance Volume. "Negative Imbalance Volume", or "Under-deliveries", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

9. Operational Flow Order. "Operational Flow Orders", or "OFOs", are notices issued by the Company via its electronic bulletin board (EBB) or fax transmission requiring Suppliers to adjust their daily deliveries into the Company's system to match, match or be less than, or match or be more than their Adjusted Target Supply Quantity for the Supplier's Pool of Customers receiving service under Rates FT and RFT. Supplier shall be required to deliver natural gas, or cause natural gas to be delivered, into the Company's specified city gate receipt points, if it is determined by the Company to be necessary and the specified receipt points and amounts are identified in the OFO notice posted on the EBB.
10. Over-deliveries. "Over-deliveries", or "Positive Imbalance Volume", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.
11. Pool Customer. "Pool Customer" means a recipient of Transportation Service provided by the Company under Tariff Sheet Nos. 33 or 52 who receives gas supply from a Supplier as a member of a Pool.
12. Pooling Program. "Pooling Program" refers to the services provided under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Firm Transportation Service (Rate FT – Sheet No. 52), and Full Requirements Aggregation Service (Rate FRAS – Sheet No. 44).
13. Pooling Service. "Pooling Service" is a service provided by the Company that allows Suppliers (marketers, Suppliers, brokers, and producers) to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the full firm requirements of the one, or more, firm transportation Customers that comprise the membership of the Supplier's "pool", all in accordance with rules that the Company has established regarding delivery requirements, advancing, banking, billing and payments, bonding, Supplier performance requirements, and other similar requirements for participation as a "Supplier" in the Rate FT and RFT, firm transportation programs.
14. Positive Imbalance Volume. "Positive Imbalance Volume", or "Over-deliveries", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.
15. Program. "Program" means the Company's firm transportation/supply aggregation Customer choice program under Rate RFT and Rate FT, and Rate FRAS, respectively.
16. PUCO. "PUCO" means the Public Utilities Commission of Ohio.
17. Target Supply Quantities. "Target Supply Quantities", or "TSQ", are defined as daily city gate delivery quantities determined from statistical models used to estimate the daily gas usage of the full requirements firm Customers in Supplier's Pool. These daily gas usage estimates are adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.
18. The Pool. A group of one or more Customers, joined together by the Supplier for supply management purposes under this Agreement, which are receiving service pursuant to the Company's firm transportation tariffs.
19. Unaccounted-for Gas Loss. "Unaccounted-for Gas Loss" is the difference between the Company's total available gas commodity and the total gas commodity accounted for (metered) as sales and transported volumes. The difference is comprised of factors including but not limited to leakage, discrepancies due to meter inaccuracies, Company use and with the use of cycle billing, an amount of gas used but not billed.
20. Unaccounted-for Percentage. "Unaccounted-for Percentage" means a percentage calculated by dividing the difference between: 1) the aggregate volume of gas received into Company's system from the interstate pipelines plus the volume of vaporized propane, all converted to Mcf using the Btu content associated with such supply source and 2) the aggregate volume consumed by all of Company's gas Customers over that same period, by the Mcf volume calculated in item 1) above.
21. Under-deliveries. "Under-deliveries", or "Negative Imbalance Volume", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

ARTICLE II

Term

The term of this Agreement shall commence on the first day of the month after execution hereof and, subject to Suppliers' continued compliance with the requirements outlined herein for participation in this program, shall continue in effect thereafter for a primary term of twenty-four (24) months. Thereafter, this Agreement shall continue from month to month, unless terminated by either party, upon at least ninety (90) days advance written notice. However, in no case shall this Agreement be terminated during a winter month (November through March), unless such winter period termination date is mutually agreed upon by both the Company and Supplier and/or except pursuant to the provisions of Articles III, VI, and X of this Agreement. Supplier shall be required to incorporate sufficient flexibility into its pooling agreements with its end-user Customers that it serves, so that the operation of this provision will not contravene end-user Customers' rights under those agreements. In the event this Agreement is terminated in accordance with the procedures contained herein, Supplier's Customers shall be given the option of either electing an alternate Supplier, or returning to the Company's system supply, in accordance with the procedures outlined in Case No. 85-800-GA-AIR, as modified by the Commission from time to time.

ARTICLE III

Requirements For Program Participation

The Company shall have the right to establish reasonable standards for participation in this Program, provided it does so on a non-discriminatory basis. Accordingly, in order to participate as a "Supplier" in the Company's Firm Transportation Program, Supplier shall upon request provide the Company, on a confidential basis, with balance sheet and other financial statements, and with appropriate trade and banking references. Supplier also agrees to allow the Company to conduct a credit investigation as to Supplier's credit worthiness and will pay a fee to the Company to cover the cost of a credit check, as set forth in Sheet No. 45 of the Company's P.U.C.O. Gas No. 18 tariff. Further, if the Company determines that it is necessary, Supplier agrees to maintain a cash deposit, an irrevocable letter of credit at a Company approved bank of the Supplier's choosing, or such other financial instrument, as the Company may require during the term of this agreement in order to assure Supplier's performance of its obligations under this Agreement. In order to assure that the value of such financial security instruments remains proportional to Supplier's potential liability under this Agreement, the required dollar amounts of such instruments shall be adjusted at the sole discretion of the Company, as Customers are added to, or deleted from, Supplier's pool. Supplier agrees that, in the event it defaults on its obligations under this Agreement and in order to satisfy Supplier's obligations under this Agreement, Company shall have the right to use such cash deposit, the proceeds from such irrevocable letter of credit, the proceeds from any other financial instrument agreed upon by the parties, and set-off against such obligations any revenue obtained through Company's billing on Supplier's behalf or any other revenues obtained by the Company as a result of any and all agreements and relationships between Company and Supplier. Such proceeds shall be used to secure additional gas supplies, including payment of the costs of the gas supplies themselves, the costs of transportation, storage, gathering and other related costs incurred in bringing those gas supplies into the Company's system. The proceeds from such instruments shall also be used to satisfy any outstanding claims that the Company may have against Supplier, including imbalance charges, cash-out charges, pipeline penalty charges, annual reconciliation charges, and other amounts owed to the Company, and arising from, Supplier's participation in this pooling program.

In the event Supplier elects, or is forced, to terminate its participation in this Program in accordance with the provisions of this agreement, it shall continue its obligation to maintain its financial security instrument until it has satisfied all of its outstanding claims of the Company.

In addition to the above financial requirements, the Company may impose reasonable standards of conduct for Suppliers, as a prerequisite for their participation in the Program. Supplier acknowledges that in its capacity as a "Supplier" in this Program, it has a continuing responsibility to conduct its business in a legal and ethical manner. If, as a result of Customers' complaints, and/or from its own investigation, the Company determines, in its sole judgment, that Supplier is not operating under this Agreement in an ethical and/or legal manner, then the Company shall have the right to proceed as stated in the "Consequences of Supplier's Failure to Perform or Comply" section of P.U.C.O. Gas No. 18, Sheet No. 44 which may result in cancellation

of this Agreement and denial of Supplier's further participation in this pooling program in accordance with the procedures described in Article X of this Agreement.

Company will maintain a list of Suppliers, who have met the pooling program's financial and performance requirements. This list will be made available to Customers upon request.

ARTICLE IV

Full Requirements Service

In exchange for the opportunity to participate in the Company's Firm Transportation Program, Supplier agrees to supply its pool Customers' full service requirements for natural gas on both a daily and monthly basis. Company's Firm Transportation Program requires that Supplier, as a participant in the Program, accepts supply co-management responsibility, as defined hereinafter, as a quid pro quo for its participation in this pooling Agreement.

ARTICLE V

Supply Co-Management Defined

Supplier agrees to deliver gas supplies into the Company's designated city gate receipt points on a daily basis, in accordance with the aggregate usage requirements of all those Customers that comprise the Supplier's pool. However, inasmuch as it is economically and operationally impractical to install metering that will allow the Company to monitor each pool member's daily usage for aggregation and comparison with the gas supplies that are delivered to the Company's city gate receipt points, Supplier's gas supply co-management/balancing responsibilities under this Agreement shall be defined as follows:

1. The Company will maintain statistical models that will be used to estimate the daily gas usage of the full requirements firm Customers in Supplier's pool. These daily gas usage estimates, as adjusted for Unaccounted-for Gas Losses, and converted from volumetric to thermal quantities, will be identified as Supplier's "Target Supply Quantities". (Note: The Unaccounted-for Gas Loss adjustment will be based on the Company's system average Unaccounted-for Percentage.) A database will be created by the Company, which, at a minimum, will track daily usage estimates on an aggregated basis for all full requirements firm Customers in Supplier's pool.
2. A daily load forecast methodology, developed by the Company, will be used to form the daily Target Supply Quantity for each Supplier's pool. The daily estimates by revenue class in each Supplier's pool will be calculated using only the usage information of firm full requirements Customers. These daily estimates are then adjusted for Unaccounted-for Gas Losses, and converted to Dth. The revenue class estimates for each Supplier are then combined to form the Target Supply Quantity for the Supplier's overall pool. Suppliers are responsible for informing the Company when their Customer's load profiles deviate significantly from their historical load profiles. The Company will make the necessary adjustments to the Target Supply Quantity calculation to account for the new profiles.
3. Starting with the Supplier's daily Target Supply Quantity, the Company will each morning by 9:00 A.M. EST post, via its electronic bulletin board (EBB), an "Adjusted Target Supply Quantity" that Supplier will be required to deliver into the Company's designated city gate receipt points during the following day. The "Adjusted Target Supply Quantity" is defined as the Target Supply Quantity, plus or minus any adjustments that Supplier is required to make to its daily deliveries pursuant to Paragraph (5) of this Article V, plus FT requirements for IT Customers, consisting of daily deliveries for the firm requirements of Customers being served under both Rate IT and Rate FT, in quantities as specified in the "Gas Firm Transportation Service for Interruptible Transportation Customers Application/Contract Amendment," which are adjusted for Unaccounted-for Gas Losses, and converted to Dth. By 1:00 P.M. E.S.T. each day, Supplier shall notify the Company via its EBB of its total city gate nominations for the next day, by Company Rate Schedule, for each pipeline company delivering into the Company's system.
4. The Adjusted Target Supply Quantities that are used to define the Supplier's next day delivery obligations shall also be the quantities against which Supplier's pipeline confirmed daily deliveries

into the Company's system combined with quantities to/from Supplier's Rider EFBS (Enhanced Firm Balancing Service) balancing service if applicable, are compared in order to determine Supplier's daily overrun/underrun volumes. Daily overrun/underrun volumes determined in this manner shall form the bases for daily "cash-outs", OFO charges, daily overrun/underrun charges, daily pipeline penalty charge flow throughs, and any other charges under this Agreement that are levied based on Supplier's failure to deliver the Adjusted Target Supply Quantities of gas into the Company's system.

5. As the final element of its gas supply co-management obligation, Supplier shall be required to reconcile annually its gas deliveries into the Company's system with the actual billed transportation volumes delivered to end-user Customers within the Supplier's pool. Such reconciliation will normally be calculated during the summer months so that any differences between calendar month and billing cycle degree-day deficiencies are minimized. The actual billed transportation volumes for the reconciliation period will be determined by adding together the transportation quantities from the "Monthly Summary Billing Reports" for Supplier's pool. Such sum shall be adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.

Supplier's deliveries into the Company's system will be based on the actual pipeline delivery reports for the reconciliation period, as adjusted for recorded "cash-outs" between the Supplier and the Company and deliveries to/from the Supplier's Rider EFBS balancing service if applicable and other gas deliveries or exchanges.

Once the Company determines the extent of any imbalance for the reconciliation period, it will have the Supplier adjust its daily deliveries above or below the calculated Target Supply Quantities for some specified period of time until any imbalances are cured. However, in no case shall the Adjusted Target Supply Quantity be a negative number. Daily overrun/underrun calculations will be adjusted to take into account any such adjustments to Supplier's daily delivery requirements. The Company shall post any required daily delivery adjustment via the EBB at least two (2) days prior to the date that Supplier is required to begin its daily delivery adjustment. This imbalance may also be reconciled through a storage inventory adjustment or an adjustment to the Supplier's Rider EFBS bank balance if applicable.

6. During the months of November through March, Company shall reserve a portion of its vaporized propane capacity for Supplier Pools, based on the product of each Pool's then-applicable Maximum Daily Quantity and the percentage of the Company's total system design day needs forecasted to be met by vaporized propane for the upcoming months of November through March. The percentage reserved shall be applied as a reduction to the Maximum Daily Quantity that will result in the Supplier's Adjusted MDQ.

When the Supplier Pool's Adjusted Target Supply Quantity exceeds the volume of Supplier's Adjusted MDQ and the Supplier elects not to deliver the incremental volume of natural gas in excess of its Adjusted MDQ, then the Company shall supply the Pool's gas needs in excess of the Supplier's Adjusted MDQ with vaporized propane or alternate peaking supplies. The fully allocated costs of the propane or alternate peaking supply provided by the Company hereunder shall be billed directly to Supplier.

By July 1st of each year, and when there is a material change in Company's propane peaking capacity, Company shall indicate the percentage of Supplier Pool's Maximum Daily Quantity that will be met with Company's vaporized propane, or alternate peaking supplies, allocated by Company to such Pool.

7. Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements in addition to the quantities of gas intended for the Supplier's bank under Rider EFBS. For Suppliers who elect service under EFBS, the north/south split for volumes up to the TSQ shall be the same as the split for Suppliers who have elected FBS and system supply. Volumes in excess of the TSQ will be subject to north/south restrictions in accordance with the Company's ability to inject gas per its agreements with the storage service providers.
8. OFOs shall be issued by Company in those situations where it is necessary, in Company's sole judgement, for Supplier to deliver at specified receipt points and/or for Supplier to deliver at the

Adjusted Target Supply Quantity in order for Company to: (a) protect the integrity of Company's gas system; (b) assure deliveries or gas supplies to all of Company's firm Customers; and/or (c) adhere to the various interstate pipeline companies' balancing requirements, as stated in their FERC approved gas tariffs under which Company is served. Suppliers who have elected Rider EFBS service shall be entitled to use such service, which shall be considered "on-system" deliveries to meet OFO requirements.

ARTICLE VI

Billing And Charges

The Company will provide Suppliers with individual pool Customers' actual billing cycle usage data as Customers are billed throughout the month by the Company for Rate FT, Firm Transportation Services and Rate RFT, Residential Firm Transportation Services.

Supplier's transportation quantities shall be determined from the Company's "Monthly Summary Billing Report," which reflects Customer's actual billed transport volumes, as generated within the Company's revenue reporting system.

Supplier shall be billed charges for services elected under the Rider FBS (Firm Balancing Service) or EFBS (Enhanced Firm Balancing Service) based on the balancing service(s) elected for its Program Pool(s). Should Supplier's daily deliveries combined with quantities to/from Supplier's Rider EFBS balancing service, if applicable not equal their Adjusted Target Quantities, then the Company will either buy-down Supplier's excess deliveries, or sell Supplier additional gas quantities until the daily Adjusted Target Supply Quantities are matched as further described below. However, if Supplier repeatedly and significantly fails to honor its delivery obligations within the tolerances established for this program, after adequate notice and opportunity to cure, Supplier shall be removed from the program, and the Customers that it serves will have the option of either returning to system supply or electing another Supplier.

On those days when Supplier delivers quantities of gas into the Company's system that are in excess of the Adjusted Target Supply Quantity, Company shall purchase the excess quantities as required in order for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier has elected balancing service Company's Tariff Rider EFBS as further described below. These over-deliveries shall be cashed out to the Supplier at the first of the month index published in Inside F.E.R.C. Natural Gas Report, "Prices of Spot Gas Delivered to Pipelines," Columbia Gulf Transmission Co., Onshore Louisiana Index, first publication of the month following the delivery month, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation costs, plus fuel, to the Company's city gate.

On those days when Supplier delivers quantities of gas into the Company's system that are less than the Adjusted Target Supply Quantities, the Company shall sell, and Supplier shall buy, such quantities of gas as are required in order for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier has elected balancing service under Company's Tariff Rider EFBS as further described below. These under-deliveries shall be cashed out to the Supplier at the first of the month index published in Inside F.E. R. C. Natural Gas Report, "Prices of Spot Gas Delivered to Pipelines", Columbia Gulf Transmission Co., Onshore Louisiana Index, first publication of the month following the delivery month, plus Columbia Gulf and Columbia Gas Transmission pipelines' commodity transportation cost, plus fuel, to the Company's city gate plus Company's Rider ETR, Ohio Excise Tax Liability Rider.

On days when OFOs are issued, any gas delivered by Supplier on these days in excess of Adjusted Target Supply Quantities will be confiscated by the Company and used for its general supply requirements, without compensation to Supplier except when Supplier has elected balancing service under Company's Tariff Rider EFBS as further described below. In addition, Company shall flow through to Supplier any penalty charges that it incurs from its pipelines for such excess deliveries, provided such penalties can be attributed to Supplier's over deliveries.

On days when OFOs are issued and Supplier delivers less than its Adjusted Target Supply Quantities, the Company shall sell, and Supplier shall buy, quantities of gas as are required for Supplier to match his daily Adjusted Target Supply Quantities except when Supplier has elected balancing service under Company's Tariff Rider EFBS as further described below. The price for such quantities shall be the higher of the "cash out" charge described above for under deliveries, or the Company's actual costs of replacement

supplies. In addition, the Company shall flow through to Supplier any penalties that Company incurs from its suppliers, or transporters, that are attributable to Supplier's under deliveries.

The only exception to the above two paragraphs regarding OFO's shall be on those OFO days when the Company grants Supplier, authorization to make over/under deliveries. On these days, Company will waive the regular cash out charges described above, waive the confiscation of gas supplies, and waive the flow through of pipeline penalty charges on all authorized excess/under deliveries. The Company shall grant authorization for excess/under deliveries on a non-discriminatory basis.

If Supplier has elected balancing service under Company's Rider EFBS, Supplier is required to deliver gas under the terms of the Rider. Deliveries in excess or less than the Adjusted Target Supply Quantities will be increases or decreases to the Supplier's EFBS bank balance. When the Company's storage service provider is not authorizing over injections or over withdrawals Supplier will be held to their designated MDDQ (Maximum Daily Delivery Quantity) and MDBQ (Maximum Daily Bank Quantity) as determined by Rider EFBS. Deliveries to the Company in excess of the Suppliers Adjusted Target Supply Quantity plus their MDBQ will be confiscated by the Company and used for its general supply requirements, without compensation to Supplier. Deliveries to the Company combined with Supplier's MDDQ that are less than the Supplier's Adjusted Target Supply Quantity will be sold to the Supplier at the higher of the "cash out" charge described above for under deliveries, or the Company's actual costs of replacement supplies.

Suppliers shall have the right to make daily/monthly inter-pool trades under Rate GTS, Gas Trading Service.

The Company shall have the right to update all of its charges under this Agreement on the basis of its actual cost experience. All revenues collected from Supplier pursuant to the provisions of Article VI of this Agreement shall be flowed back to sales Customers through the Company's Gas Cost Recovery mechanism.

ARTICLE VII

Compensation For Gas Utilized by Company

In the event the Company, acting pursuant to regulations or guidelines then in effect of government agencies having jurisdiction over such matters, utilizes natural gas supplies of the Supplier in order to assure gas supply to human needs and public welfare Customers as defined in PUCO Case No. 85-800-GA-COI, the Company will reimburse Supplier for such usage upon the presentation of invoices by Supplier documenting its delivered cost for such natural gas.

ARTICLE VIII

Payment

On or about the tenth work day of the month, the Company shall render to Supplier a statement of the quantities delivered and amounts owed by Supplier for the prior billing month, including prior month's late payment charges. Suppliers shall have ten (10) days from the date of such statement to render payment to the Company. Invoices for under \$100,000 may be paid by check, but payment must be postmarked within ten (10) days of the invoice date. Invoices of over \$100,000 must be paid by Electronic Funds Transfer within ten (10) days of the invoice date. In any case, when the due date falls on a holiday or weekend, payment will be due on the following business day.

If payment is not made by Supplier by the due date, as described above, an additional cost will be added to the charges otherwise due, and determined by applying the daily equivalent of the currently effective prime rate, plus two (2) percent to the unpaid balance for each day until payment is received. When a bill has remained unpaid for a period of thirty (30) days after rendition by the Company, and no other financial arrangements have been agreed upon, the Company may, at its sole option, and without liability therefor, suspend or cancel such Agreement with Supplier after giving written notice of its intention to do so, but such suspension or cancellation shall not discharge Supplier from its obligation to pay such bill or from any other obligation under this Agreement, nor does such suspension or cancellation preclude the Company from any rights or remedies it does or may have at law or in equity to enforce any of the provision of this Agreement.

ARTICLE IX

Interstate Pipeline Capacity

As a prerequisite for its participation in this Program, Supplier agrees, as agent for its pool Customers, to acquire firm interstate pipeline capacity into the Company's system in amounts equal to the aggregate Adjusted MDQ of Supplier's Customer pools less the firm interstate pipeline capacity assigned to the Supplier by the Company, including the MDDQ associated with the EFBS program, as more fully described below. . The Company shall have the right to periodically review the level and assignment of Supplier's capacity contracts in order to assure adequate Adjusted MDQ coverage.

Due to the physical configuration of the Company's system, and certain upstream interstate pipeline facilities, and to enable the Company to comply with lawful interstate pipeline tariffs and/or to maintain the Company's system integrity. The Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements, which shall include any use by Supplier of its EFBS bank so that Supplier's total deliveries, including flowing supply and EFBS bank withdraw, need not exceed Supplier's Adjusted MDQ. Specific delivery requirements will be electronically posted by the Company.

If Supplier's aggregate Pools' MDQ exceeds 6,000 Dth/day and Supplier adds 3,000 Dth/day of additional MDQ, Supplier shall be assigned a proportionate amount of Company's interstate pipeline firm transportation capacity by Company. Additionally, Company will recall proportionately some capacity from Supplier if Supplier's aggregate Pools' MDQ is reduced by 3,000 Dth/day. This MDQ criterion will be reviewed by the Company semi-annually based on the MDQ as of September 30th with any release/recall becoming effective the following November 1st, and on the MDQ as of February 28th, with any release/recall becoming effective the following April 1st.

1. Supplier will be notified of any change to its released capacity by October 15th for winter capacity and by March 15th for summer capacity.
2. The assignment shall be structured as a release of capacity. The posted rate will be the rate for which the Company has contracted with the interstate pipeline. Any capacity with a discounted rate will be posted open to bids, with Supplier being the prearranged bidder. All other capacity will be posted at the pipeline's maximum rate with Supplier being the prearranged shipper.
3. The term of the release shall be on a seasonal basis, from November 1st through March 31st or April 1st through October 31st. Any incremental capacity changes will be handled by recalling the previously released capacity and re-releasing at the new amount.
4. Company shall assign interstate pipeline firm transportation capacity consistent with its delivery north/south allocation percentages and on a pro-rata basis to Company's total capacity for the designated pipelines or the parties may choose a mutually agreed-upon assigned capacity portfolio.
5. Capacity will be assigned to Supplier on a "recall and reput" basis. Company shall release this capacity utilizing the appropriate pipeline company's electronic bulletin board and Supplier shall execute the service agreements so generated by the pipelines five (5) days prior to the end of the month to enable Supplier to nominate gas suppliers under the service agreements for the following month. If Supplier fails to execute the service agreements the charges for the released capacity will be added to the Supplier's Pool Invoice for the month.
6. Prior to the capacity release process, Supplier shall comply with the appropriate pipeline's credit review and establish itself on the pipeline's Approved Bidders List (as defined in the interstate pipeline company's tariff).
7. Company, as releasing shipper under a recallable release, remains liable to the pipeline for reservation charges, and any applicable surcharges. Supplier will provide sufficient financial guaranty to the Company of its ability to pay such pipeline charges.
8. Company reserves the right to change the type of information required as well as the nomination deadline to comply with the requirements of the interstate pipeline companies.

9. There will be no restrictions on Supplier's use of the released capacity at such times that it is not required to deliver gas to Company's system.
10. Supplier may re-release all or a portion of the capacity to a Replacement Shipper who meets all the requirements to which the Supplier is subject including but not limited to, Company's right of recall. A re-release shall not relieve Supplier of its obligation under the provisions of the capacity release.
11. Supplier, after receiving such assignment shall pay the pipeline(s) directly for all charges associated with the use of released capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, and penalties.
12. Supplier shall not revise receipt and delivery points of the interstate pipeline company firm transportation capacity released by Company, without written consent from Company. Supplier will be responsible for operating the assigned capacity consistent with all the terms and conditions set forth in the tariffs of Company and the applicable pipeline companies.

ARTICLE X

Remedies

1. Defaults. In addition to other rights to terminate or cancel that appear elsewhere in this Contract, if Company or Supplier fails to perform, to a material extent, any of the obligations imposed upon either under this Agreement, then the other party may, at its option, terminate or cancel this Agreement by causing written notice thereof to be served on the party in default, stating specifically the cause for terminating or canceling this Agreement and declaring it to be the intention of the party giving the notice to terminate or cancel the same. In the event a party receives notice of termination or cancellation made pursuant to this Article XII, the party in default shall have thirty (30) days after the service of the aforesaid notice in which to remedy or remove the cause or causes stated in the notice for terminating or canceling this Agreement, and if, within said period of thirty (30) days, the party in default does so remedy or remove said causes, then such notice shall be deemed to have been withdrawn and this Agreement shall continue in full force and effect. If the party in default does not so remedy or remove the cause or causes within said period of thirty (30) days, then, at the option of the party giving notice, this Agreement shall terminate or cancel as of the expiration of said 30-day period. Any termination or cancellation of this Contract, pursuant to this Article XII shall be without waiver of any remedy, whether at law or in equity, to which the party not in default otherwise may be entitled for breach of this Agreement.
2. Sole and Exclusive Remedies. The liquidated damages, termination rights, cancellation rights, and interest payments outlined in this Agreement for non-performance herein shall be Company and Suppliers' respective sole and exclusive remedies for such non-performance. In no event shall either party be liable for special, incidental, exemplary, punitive, indirect or consequential damages including, but not limited to, loss of profit or revenue, cost of capital, cost of substitute products, downtime costs, or claims for damages by third parties upon Company or Supplier. This applies whether claims are based upon contract, warranty, tort, (including negligence and strict liability), or other theories of liability.

ARTICLE XI

Force Majeure

If either Supplier or Company is unable to fulfill its obligations under this Agreement due to an event or circumstance which is beyond the control of such party and which prevents such performance, such party shall be excused from and will not be liable for damages related to non-performance during the continuation of such impossibility of performance. Neither of the following shall be considered a force majeure condition: 1) changes in market conditions that affect the acquisition or transportation of natural gas, or 2) failure of Supplier to deliver or Pool Customers to consume scheduled gas volumes.

The party claiming force majeure will use due diligence to remove the cause of the force majeure condition and resume delivery or consumption of gas previously suspended. Gas withheld from the Supplier or Pool Customers during a force majeure condition will be delivered upon the end of such condition as soon as practicable.

ARTICLE XII

Title to Gas

Supplier warrants that it will have good title to all natural gas delivered to the Company hereunder, and that such gas will be free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify the Company, and save it harmless from all suits, actions, debts, accounts, damages, costs, losses and expenses arising from or out of a breach of such warranty.

ARTICLE XIII

Limitation of Third Party Rights

This Agreement is entered into solely for the benefit of Duke Energy Ohio and the Supplier and is not intended and should not be deemed to vest any rights, privileges or interests of any kind or nature to any third party, including, but not limited to the Customer group that Supplier establishes under this Agreement.

ARTICLE XIV

Succession and Assignment

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto. However, no assignment of this Agreement, in whole or in part, will be made without the prior written approval of the non-assignee party. The written consent to assignment shall not be unreasonably withheld.

ARTICLE XV

Applicable Law and Regulations

This Agreement shall be construed under the laws of the State of Ohio and shall be subject to all valid applicable State, Federal and local laws, rules, orders, and regulations. Nothing herein shall be construed as divesting or attempting to divest any regulatory body of any of its rights, jurisdiction, powers or authority conferred by law.

ARTICLE XVI

Notices and Correspondence

Written notice and correspondence to the Company shall be addressed as follows:

Duke Energy Ohio, Inc.
P. O. Box 960
Cincinnati, Ohio 45201-0960
Attention: General Manager, Gas Commercial Operations

Telephone notices and correspondence to the Company shall be directed to (513) 287-4078. Operational notices to the Company shall be directed to the above address, Attention: Gas Control, telephone (513) 287-3590. Fax notices to the Company shall be directed to (513) 287-2938.

Written notices and correspondence to the Supplier shall be addressed as follows:

Telephone notices to the Supplier shall be directed to () _____
Fax notices to the Supplier shall be directed to () _____

Either party may change its address for receiving notices effective upon receipt, by written notice to the other party.

IN WITNESS HEREOF, the parties hereto executed this Agreement on the day and year first above written.

WITNESS:

Duke Energy Ohio, Inc.

By: _____

WITNESS:

SUPPLIER

By: _____