



Date 9/17/2009

Via Fax: 513-287-2718

Certified Supplier Business Center
Duke Energy Ohio, Inc.
139 E. Fourth Street
EY575
Cincinnati, Ohio 45202

To Whom It May Concern:

In accordance with the Electric Security Plan Tariff Rate DS on file at and approved by the Public Utilities Commission of Ohio, City of Mason is hereby submitting acknowledgement to Duke Energy Ohio, Inc. that City of Mason has executed an agreement with a creditworthy CRES provider, Duke Energy Retail Sales to provide generation service through December 31, 2011 for the following account(s):
(See Attached Account Schedule A)

Such an agreement is effective 9/17/2009 and contemplates the full capacity, energy and transmission requirements of City of Mason Sixty days notice to Duke Energy Ohio, Inc. of the effective date of such agreement has been previously provided and should be noted in your records.

This executed acknowledgement shall serve as sufficient proof, in accordance with the Tariff, to qualify to bypass the System Reliability Tracker and to receive the applicable shopping credit through December 31, 2011.

Sincerely,

City of Mason

Duke Energy Retail Sales

By: _____
Authorized Representative

By: _____
Authorized Representative

Print Name: _____ Eric Hansen _____

Print Name: _____ Chris A. Eyer _____

Title: _____ City Manager _____

Title: _____ Sales Manager _____

Date: _____

Date: _____

Attachment A

Customer Accounts To Be Exclusively Served By Duke Energy Retail Sales, LLC During The Term

	Account No.	Current Electric Distribution Utility	Meter Serial No.	Meter Read Date	Service Initiation Date
1.	4530-2173-01-3	DEO			
2.	4900-2087-02-1	DEO			
3.	4660-2146-02-2	DEO			
4.	5370-0845-20-2	DEO			
5.	5420-0723-20-4	DEO			
6.	7320-2170-01-0	DEO			
7.	8810-2125-04-0	DEO			
8.	0070-0279-21-9	DEO			
9.	1880-0721-21-7	DEO			
10.	1930-0829-21-2	DEO			
11.	3860-0779-21-1	DEO			
12.	5160-2083-02-4	DEO			
13.	7230-0707-21-2	DEO			
14.	9960-0279-21-8	DEO			
15.	8230-0866-21-9	DEO			
16.	8250-0705-21-0	DEO			
17.	7610-0678-02-7	DEO			
18.	2240-2100-02-1	DEO			
19.	9180-2084-02-7	DEO			
20.	5350-3678-01-9	DEO			
21.	6350-3678-01-4	DEO			
22.	0430-2054-01-6	DEO			
23.	0900-0098-22-9	DEO			
24.	1860-0854-01-8	DEO			
25.	2550-2228-01-6	DEO			
26.	4820-0869-20-9	DEO			
27.	5730-3600-01-0	DEO			
28.	5840-2232-01-1	DEO			
29.	5840-3607-01-9	DEO			
30.	4090-2041-03-8	DEO			
31.	9490-0488-20-8	DEO			
32.	9600-2230-01-9	DEO			
33.	3370-0098-21-0	DEO			
34.	3420-2149-01-6	DEO			
35.	0850-3568-01-3	DEO			
36.	1710-2090-01-2	DEO			
37.	3720-2006-02-8	DEO			
38.		DEO			

DUKE ENERGY RETAIL SALES, LLC

RETAIL POWER SALES AGREEMENT

THIS RETAIL POWER SALES AGREEMENT is made by and between DUKE ENERGY RETAIL SALES, LLC, a Delaware limited liability company, with an address at 139 East Fourth Street, Suite EA600, Cincinnati, Ohio 45202 (“Supplier”), and the party identified below as the customer (“Customer”). Supplier and Customer are each individually referred to herein as a “Party” and collectively as the “Parties.” This Agreement is effective as of the date of each Party’s execution and delivery as evidenced by their respective signatures below (“Effective Date”).

COVER FORM

Customer Information

Duke Energy Retail Sales Contact

Customer Name: City of Mason	Duke Energy Retail Sales, LLC
Attn: Larry Rudd	Attn: Chris A. Eyer
Street Address: 6000 Mason-Montgomery Road	139 East Fourth Street
City/State/Zip: Mason, OH 45040	Cincinnati, OH 45202
Phone: 513-229-8520	Phone: 513-419-5947
Fax:	Fax: 513-419-5637
Email:lridd@masonoh.org	Email: chris.eyer@duke-energy.com

Term of Agreement

The term of this Agreement shall begin on the first eligible Billing Cycle for Customer’s Accounts following the Effective Date and acceptance of enrollment by the Electric Distribution Utility, and shall continue for energy delivered until December 31, 2011, for each of Customer’s Accounts (the “Term”).

Pricing Options

See attached Pricing Schedule

Security Options

Corporate Guarantee
Guarantor: _____ N/A _____ \$ _____

Letter of Credit
Issuing Bank: _____ N/A _____ \$ _____

Other
Description: _____ N/A _____ \$ _____

Billing Options

Dual Billing

X Consolidated Billing

Custom Billing

Payment Options

Wire Transfer

Electronic funds transfer

X check/cash

Energy Consumption Forecasts

Forecasts to be submitted via email to dersforecast@duke-energy.com or by phone at 1-800-920-5039.

Weekly Consumption Forecast
Hourly forecast of Energy consumption for the next calendar week, to be provided by 5:00 p.m. EPT each Thursday.

Monthly Peak and Energy Consumption Forecast
Forecast of Customer’s monthly peak demand and energy consumption for the next calendar month, to be provided by 5:00 p.m. EPT on the 10th day of each month.

X Alternative Forecasting
See attached Pricing Schedule.

Schedules incorporated at initial execution	
<input checked="" type="checkbox"/> Pricing Schedule	
<input type="checkbox"/> []	

Customer Accounts To Be Exclusively Served By Duke Energy Retail Sales, LLC During The Term				
Account No.	Current Electric Distribution Utility	Meter Serial No.	Meter Read Date	Service Initiation Date
1. See Attached Schedule A				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				
10.				
11.				
12.				

This Retail Power Sales Agreement includes the Terms and Conditions attached hereto and the other documents attached hereto which are expressly incorporated herein by reference (including without limitation the Pricing Schedule attached hereto) (collectively, the "Agreement") and sets forth the terms and conditions under which Duke Energy Retail Sales, LLC will sell retail power to Customer. By signing below, Customer hereby certifies that it has read the Terms and Conditions of this Retail Power Sales Agreement and that it agrees to be bound by such terms and conditions. This Agreement may be executed in counterparts.

DUKE ENERGY RETAIL SALES, LLC	CUSTOMER:
Signed:	Signed:
Name: Chris A. Eyer	Name: Eric Hansen
Title: Sales Manager	Title: City Manager
Date:	Date:

Supplier's Limited Time Offer: The pricing and terms contained in this Agreement are void unless signed and returned to Duke Energy Retail Sales, LLC by 12:01 p.m. on 9/18/2009.

Any order for the purchase of Energy from Supplier shall be subject only to the terms and conditions set forth herein and the same shall be subject to the written approval and acceptance of Supplier. Any quote issued by Supplier is for informational purposes only, does not constitute an offer, expires as set forth above, and may be reinstated only by written confirmation by Supplier. Stenographic and clerical errors are subject to correction. Supplier hereby expressly limits the acceptance of its offer to the terms stated herein. All other terms offered or proposed by Customer are objected to, unless expressly assented to in writing by Supplier. Supplier's acceptance of any offer made by Customer is made expressly conditional on Customer's assent to the terms hereof. Each Party's acceptance and assent to the terms hereof shall be evidenced by their respective signatures above. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Customer pertaining to the goods described on the front side hereof are hereby objected to and shall be of no effect.

RETAIL POWER SALES AGREEMENT TERMS AND CONDITIONS

THESE TERMS AND CONDITIONS of the RETAIL POWER SALES AGREEMENT are entered into in connection with and are made a part of the Retail Power Sales Agreement (the "Agreement") by and between DUKE ENERGY RETAIL SALES, LLC, a Delaware limited liability company ("Supplier") and CUSTOMER.

1. **Agreement.** These Terms and Conditions, the attendant Cover Form attached to the face hereof, and all documents incorporated by reference herein (including without limitation the Pricing Schedule attached hereto) (collectively referred to herein as the "Agreement") shall bind Supplier and Customer and constitute the entire agreement between them. Any amendment or modification shall require the written consent of each Party.
2. **Purchase and Sale of Energy.** Supplier shall provide, and Customer shall purchase and accept from Supplier, Customer's Firm, Full Requirements of Energy during all hours of the Term.
3. **Delivery Point.** Supplier shall deliver Energy to the distribution system of the applicable Electric Distribution Utility ("Delivery Point"). Customer shall make arrangements with the applicable Electric Distribution Utility for the delivery of Energy from the Delivery Point to Customer's Facilities.
4. **Customer Account Service Period.** For each of Customer's Accounts, Supplier will deliver Energy to Customer starting on the first day of the first eligible Billing Cycle occurring during the Term (the "Service Initiation Date"), and ending on the last day of the last Billing Cycle falling within the Term (the "Service Termination Date"), unless sooner terminated in accordance herewith. Supplier shall be the exclusive Energy supplier for Customer's Accounts from the Service Initiation Date through the Service Termination Date.
5. **Pricing and Applicable Fees.**
 - a. Customer is responsible for paying Supplier for all Energy used or which has been estimated to have been used during the Term of this Agreement.
 - b. Customer shall pay Supplier for Energy delivered hereunder during the applicable Billing Period in accordance with the pricing set forth on the Cover Form (or as set forth on the Pricing Schedule attached hereto).
 - c. As a retail sale, the Agreement is not subject to the jurisdiction of the Federal Energy Regulatory Commission (the "FERC"); nor shall either Party seek to have the FERC assert jurisdiction over this Agreement. However, to the extent that either the FERC (or any successor entity) or the Public Utilities Commission of Ohio assert jurisdiction over this Agreement, the Parties agree that the charges set forth herein are just and reasonable and consistent with the public interest. Neither Supplier nor Customer shall seek to modify the charges set forth herein through the auspices of any regulatory body.
 - d. Customer may be charged switching fees by the Electric Distribution Utility.
6. **Payment Terms and Billing.**
 - a. **Dual Billing.** If "Dual Billing" is indicated on the Cover Form, then Supplier shall deliver to Customer, no more frequently than once each applicable Billing Cycle and no less frequently than monthly, in Supplier's sole discretion, an invoice setting forth the charges incurred hereunder for Customer's Accounts for the applicable Billing Cycles.
 - b. **Consolidated Billing.** If "Consolidated Billing" is indicated on the Cover Form, then all charges or fees imposed pursuant to the terms of the Agreement will appear on Customer's Electric Distribution Utility bill as a separate line item, and Customer shall pay such amount to the Electric Distribution Utility. Notwithstanding anything to the contrary herein, Supplier reserves the right to separately invoice Customer for any and all amounts not paid to the Electric Distribution Utility and to exercise all rights with respect thereto that Supplier may have at law or in equity.
 - c. **Custom Billing.** If "Custom Billing" is indicated on the Cover Form, then charges or fees imposed pursuant to the terms of the Agreement will appear on Customer's Electric Distribution Utility bill as a separate line item, and Customer shall pay such amount to the Electric Distribution Utility. In addition, depending on the Alternative Pricing negotiated between the parties, Supplier may separately invoice Customer for some of the charges and fees not invoiced by the Electric Distribution Utility. In such case, Supplier shall deliver to Customer, no more frequently than once each Billing Cycle and no less frequently than monthly, an invoice setting forth the charges incurred hereunder not invoiced by the Electric Distribution Utility for Customer's Accounts for the applicable Billing Cycles.
 - d. **Payment.** If billing is conducted pursuant to Sections 6(a) or 6(c), payment of Supplier invoices shall be due to Supplier as indicated on the Cover Form within twenty (20) days after receipt of the invoice. Overdue payments will accrue interest at the Interest Rate from the due date to the date of payment. Partial payments shall be credited to Customer in the following order: (i) billed and past due charges; and (ii) billed and due charges. If any amount of an invoice is disputed in good faith, the entire amount shall be paid when due. Any disputed amounts that are ultimately determined to be owed to Customer, shall be repaid by Supplier with interest accrued at the Interest Rate from the date payment was made by Customer through the date of re-payment to the Customer.
 - e. **Netting.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other arising from this Agreement through netting, in which case all amounts owed by each Party to the other Party shall be netted so that only the excess amount remaining due shall be paid by the owing Party.
 - f. **Payment History.** Customer may request from Supplier, twice within a twelve month period, up to twenty-four months of the customer's payment history without charge.
 - g. **Customer Information.** Customer hereby authorizes Supplier to obtain Customer EDU meter readings, billing

history, and bill images, and to access Customer EDU account information through the EDU's customer web portal (if available) for purposes of providing service to Customer and administering Supplier's obligations hereunder.

7. **Failure to Pay.** Customer's failure to pay any fees assessed hereunder (whether through Dual Billing, Consolidated Billing, or Custom Billing) may result in Customer being returned to the Electric Distribution Utility's standard offer service and forfeiture of Customer's ability to choose another competitive retail electric service provider until the arrearages are paid off.
8. **Security.**
- a. If a Material Adverse Change has occurred with respect to the Customer, Supplier may make a written request of Customer to provide Security in an amount (and in a form) determined by Supplier to be reasonable under the circumstances. Upon receipt of such request, Customer shall have three (3) Business Days to provide such Security.
 - b. In the event that the Security provided by Customer to Supplier is in the form of a cash deposit ("Cash Collateral"), Customer shall be entitled to receive interest on such Cash Collateral under the following terms and conditions:

So long as no Event of Default has occurred with respect to Customer, interest shall accrue on the dollar amount of the Cash Collateral from the date of receipt by Supplier at a rate equal to the Federal Funds Overnight Rate as in effect on the date of transfer. So long as no Event of Default has occurred with respect to Customer, Supplier shall pay the Interest Amount to Customer three Business Days following the last Business Day of each calendar month. On or after the occurrence of an Event of Default with respect to Customer, Supplier shall have the right to retain any such Interest Amount as additional Security hereunder until the obligations of Customer under this Agreement have been satisfied.
 - c. Subject to Section 6(d), and any indemnification obligations Customer may have incurred hereunder, upon the expiration or termination of this Agreement, Supplier shall return any remaining Security held by Supplier.
9. **Customer Usage Forecasting.** Customer shall provide required Energy consumption forecasts to Supplier as indicated on the Cover Form in a mutually agreeable form. Customer shall notify Supplier as soon as practicable of (i) any revised consumption forecasts, (ii) any known or expected changes in usage, any scheduled or unscheduled outages and/or any of Customer's Accounts closings that may occur or may be expected to occur during the Term. To the extent that Customer has reason to believe that a prior forecast is inaccurate or incomplete, Customer shall promptly provide Supplier with updates and corrections (if applicable) to any such forecast. Customer shall send forecasts and notices required by this Section 9 to dersforecast@duke-energy.com or at 1-800-920-5039.
10. **Additional Meter Installation.** Customer shall be responsible for installing meters and related equipment (including any telemetry and associated telephonic connections) at Customer's Facilities that are required by Customer's Electric Distribution Utility for Supplier to perform its obligations under this Agreement. Such meters shall measure all Energy usage at Customer's Facilities.
11. **Title, Risk of Loss and Indemnity.** As between the Parties, Supplier shall be deemed to be in exclusive control and possession of the Energy prior to its delivery at the Delivery Point, and Customer shall be deemed to be in exclusive control and possession of the Energy at and from the Delivery Point. Title to and risk of loss related to the Energy shall transfer from Supplier to Customer at the Delivery Point. Supplier and Customer shall each indemnify, defend and hold harmless the other Party from claims, damages or injuries arising from an occurrence when title to the Energy is held by the indemnifying Party.
12. **Events of Default.** An "Event of Default" means, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- a. any representation or warranty made by the Defaulting Party herein shall at any time prove to be false or misleading in any respect material to this Agreement;
 - b. the failure of the Defaulting Party to perform any of its obligations set forth in this Agreement (except to the extent constituting a separate Event of Default,) and such failure is not excused by Force Majeure or cured within five (5) Business Days after written notice thereof to the Defaulting Party;
 - c. the failure to make when due, any payment required pursuant to this Agreement if such failure is not remedied within two (2) Business Days after written notice of such failure is given by the other Party;
 - d. the Defaulting Party (i) files a petition or otherwise commences or acquiesces in a proceeding under any bankruptcy, insolvency, reorganization or similar law, or has any such petition filed or commenced against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or 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 unable to pay its debts as they fall due; or
 - e. Customer fails to provide Security in accordance with Section 8.
13. **Early Termination Upon Default.** Upon the occurrence and during the continuance of an Event of Default, as to the Defaulting Party, the other Party (the "Non-Defaulting Party") may, in its sole discretion: (a) issue a written notice of termination (a "Notice of Termination") to the Defaulting Party which shall contain the following: (i) the Customer Account(s) which the Non-Defaulting Party is electing to terminate, and (ii) the effective date of the termination of each Customer Account to be terminated (which date shall be no earlier than the date of the last day of the applicable Billing Cycle relating to each respective Customer Account); and/or (b) withhold any

payments due to the Defaulting Party until such Event of Default is cured; and/or (c) suspend performance of its obligations until such Event of Default is cured. If a Party issues a Notice of Termination, this Agreement shall terminate with respect to the Customer Account(s) designated on the Notice of Termination on the effective date(s) set forth therein, and such termination shall not be delayed by the invocation of the dispute resolution procedures set forth in Section 20, provided however, and for avoidance of doubt, any dispute regarding a Party's termination with respect to one or more Customer Accounts after issuance of a Notice of Termination shall be handled in accordance with the dispute resolution provisions of Section 20. Notwithstanding anything to the contrary herein, termination by either Party pursuant to the issuance of a Notice of Termination shall be without prejudice to all other rights or remedies that the terminating Party may have under law or contract. For avoidance of doubt, (i) if Customer terminates this Agreement in accordance with this Section 13, Supplier shall pay to Customer as damages the positive difference between the price Customer pays for replacement Full Requirements Energy *less* the contract price, and (ii) if Supplier terminates this Agreement in accordance with this Section 13, Customer shall pay to Supplier as damages the positive difference between the contract price *less* the market price of Energy, as determined by Supplier in a commercially reasonable manner. Without limiting the foregoing, the rights and obligations of the Parties with respect to Customer Accounts which are not so terminated shall continue in full force and effect through the Term, unless otherwise terminated in accordance herewith.

14. **Other Termination Events.** If (i) performance by either Party under this Agreement becomes subject to regulation of any kind whatsoever under any law, rule, regulation, order or similar provision to a greater or different extent than that existing on the Effective Date and such regulation either renders this Agreement illegal or unenforceable or contrary to regulatory authority, or (ii) Supplier is no longer certified as a Certified Retail Electric Service Provider by the Public Utilities Commission of Ohio, then such Party shall have the right to terminate this Agreement upon thirty (30) days notice, without further liability. Any termination of this Agreement in accordance with this Section 14 shall not be delayed by the invocation of the dispute resolution procedures set forth in Section 20 provided however, and for avoidance of doubt, any dispute regarding a Party's termination of this Agreement shall be handled in accordance with the dispute resolution provisions of Section 20. The applicable provisions of this Agreement shall remain in effect after the termination or expiration of this Agreement to the extent necessary to provide for final billing, billing adjustments and other payments due.
15. **Representations and Warranties.** Each Party represents and warrants to the other Party that, as of the Effective Date and at all times during the Term, the following shall be true and correct in all material respects: (a) it is duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation; (b) it has all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; (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 similar provision applicable to it;

(d) this Agreement (including the Cover Form and these Terms and Conditions) and each other document executed and delivered in connection with this Agreement constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; (e) there are no bankruptcy proceedings pending or being contemplated by it or, to its knowledge, threatened against it; (f) there is not pending or, to its knowledge, threatened against it or any of its affiliates any legal proceedings that could materially adversely affect its ability to perform its obligation under this Agreement or any other document relating to this Agreement; and (g) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether such Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding and understands and accepts, the terms, conditions and risks of this Agreement.

16. **Non-Utility Acknowledgement.** Each Party further agrees that, for purposes of this Agreement, the other Party is not a "utility" as such term is used in Section 366 of the U.S. Bankruptcy Code, and each Party waives and agrees not to assert the applicability of the provisions of such Section 366 in any bankruptcy proceeding wherein such Party is a debtor.
17. **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the State of Ohio without regard to principles of conflicts of law. The provisions of the Uniform Commercial Code ("UCC") of the state whose laws shall govern this Agreement shall be deemed to apply to this Agreement and Energy shall be deemed to be a "good" for purposes of the UCC.
18. **Disclaimer and Exclusive Remedies.** EXCEPT AS SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. EACH PARTY'S LIABILITY HEREUNDER SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. UNLESS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT.
19. **Assignment.** This Agreement shall be assignable by Supplier to any other direct or indirect subsidiary of Duke Energy Corporation without the Customer's consent. Any other assignment by either Party of this Agreement or any rights or obligation hereunder shall be made only with the written consent

of the other Party, which consent shall not be unreasonably withheld.

20. **Dispute Resolution.** Subject to a Party's right to terminate this Agreement in accordance with Sections 13 and 14 prior to the commencement of the dispute resolution procedures described herein, any claim, controversy or dispute arising out of or relating to this Agreement, or the breach thereof, shall be resolved in accordance with the following dispute resolution procedures.
- a. The Parties shall attempt to resolve any claims, disputes and other controversies arising out of or relating to this Agreement (collectively, "Disputes") promptly by negotiation between executives who have authority to settle the Dispute and who are at a higher level of management than the persons with direct responsibility for administration of this Agreement. The Parties agree that their respective authorized representatives will attempt in good faith to resolve all Disputes. All negotiations pursuant to this clause are to be deemed confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.
 - b. To the extent that any Dispute cannot be settled by the Parties themselves, the Parties shall fully and finally settle all Disputes, including the arbitrability of the Agreement, by binding arbitration under the Commercial Rules of the American Arbitration Association, except to the extent that the Commercial Rules conflict with this provision, in which event, this Agreement shall control. This arbitration provision shall not limit the right of either Party prior to or during any such Dispute to seek, use, and employ ancillary, or preliminary rights and/or remedies, judicial or otherwise, for the purpose of maintaining the status quo until such time as the arbitration award is rendered or the Dispute is otherwise resolved. The arbitration shall be conducted in Cincinnati, Ohio and the laws of the State of Ohio shall govern the construction and interpretation of this Agreement, except to provisions related to conflict of laws. Within ten (10) calendar days of service of a Demand for Arbitration, the Parties shall act in good faith to agree upon a sole arbitrator who is knowledgeable, disinterested and impartial. If a sole arbitrator cannot be agreed upon, a panel of three knowledgeable and disinterested arbitrators shall be named. One arbitrator shall be selected by Customer and one shall be selected by Supplier, and a knowledgeable, disinterested and impartial arbitrator shall be selected by the two arbitrators so appointed by the Parties. If the arbitrators appointed by the Parties cannot agree upon the third arbitrator within ten (10) calendar days, then either Party may apply to any judge in any court of competent jurisdiction in Ohio for appointment of the third arbitrator. The arbitrator(s) shall have the authority only to award equitable relief and compensatory damages, and shall not have the authority to award punitive damages or other non-compensatory damages. Each Party shall be responsible for the fees, expenses and costs incurred by the arbitrator appointed by each Party, and the fees, expenses and costs of the third arbitrator (or single arbitrator) shall be borne equally by the Parties. The decision of the arbitrator(s) shall be final, binding and non-appealable, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
21. **Notices.** Except as otherwise provided herein, all notices, payments shall be made as specified below.
- a. Notices required to be in writing shall be delivered by letter, facsimile or other documentary form to the respective mailing address, facsimile number or email address of each Party as set forth on the Cover Form attached hereto. A Party may change its mailing address, facsimile number or email address by providing notice of the same in accordance with this Section 21.
 - b. Notice by regular mail shall be deemed to have been received three (3) Business Days after it has been sent. Notice by facsimile or hand delivery shall be deemed to have been received by the close of the Business Day on which it was transmitted or hand delivered (unless transmitted or hand delivered after close of normal business hours, in which case it shall be deemed to have been received at the close of the next Business Day). Notice by overnight or courier shall be deemed to have been received two (2) Business Days after it has been sent.
22. **Environmental Disclosures.** Customer agrees that Supplier may make required quarterly environmental disclosures electronically on Supplier's website. Supplier will also provide environmental disclosure information to Customer at no charge upon request.
23. **General.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter contemplated by this Agreement. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof. No amendment or modification to this Agreement shall be enforceable unless set forth in writing and executed by both Parties. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or permitted assignee bound to this Agreement). No waiver by a Party of any default by the other Party shall be construed as a waiver of any other default or a waiver of future defaults. Any provision declared or rendered unlawful, invalid or unenforceable by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining lawful obligations that arise under this Agreement. The headings used herein are for convenience and reference purposes only.
24. **Confidentiality.** Neither Party shall disclose the terms or conditions of this Agreement to a third party (other than the Party's employees, Affiliates, lenders, counsel, accountants or advisors who have a need to know such information and have agreed to keep such terms confidential, and in the case of Supplier, with the Electric Distribution Utility for purposes of Consolidated or Custom Billing) except in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, however, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with,

this confidentiality obligation. The obligations of the Parties under this Section 24 shall survive the expiration and/or termination of this Agreement.

25. Definitions. In addition to any other terms otherwise defined in this Agreement, the following definitions apply to this Agreement:

- a. "Affiliate" means, with respect to any person, any other person (other than an individual) that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such person. For this purpose, "control" means the direct or indirect ownership of ten (10) percent or more.
- b. "Business Day" means a day on which Federal Reserve member banks in Ohio are open for business; and a Business Day shall open at 8:00 a.m. and close at 5:00 p.m. Eastern Prevailing Time, unless otherwise agreed to by the Parties in writing.
- c. "Customer's Accounts" means all electric utility accounts established by Customer with its Electric Distribution Utility which are transferred to Supplier for retail electric service under this Agreement, which are specifically set forth on the Cover Form of the Agreement. Upon the written consent of the Supplier, additional electric utility accounts may be added to this Agreement and thereupon such accounts shall be included within the definition of Customer Accounts.
- d. "Customer's Facilities" means those facilities of Customer associated with Customer's Accounts.
- e. "Cash Collateral" means the Security in the form of cash.
- f. "Eastern Prevailing Time" or "EPT" means the time prevailing in Cincinnati, Ohio.
- g. "Electric Distribution Utility" means the public utility company authorized by state authorities to provide electric service to the general public in the region in which Customer's Facilities are located.
- h. "Billing Cycle" means the monthly period of time for which the applicable Electric Distribution Utility renders a bill for electric distribution service for one of Customer's Accounts.
- i. "Energy" means electric energy of the character commonly known as three-phase, sixty hertz electric energy that is delivered at the nominal voltage of the Delivery Point, expressed in kWh and as measured at the Accounts' retail meters and as grossed up for sub-transmission loss factors.
- j. "Federal Funds Overnight Rate" means the rate for that day opposite the caption 'Federal Funds (Effective)' as set forth in the weekly statistical release designated as H.15 (519), or any successor publication, published by the Board of Governors of the Federal Reserve System.
- k. "Firm" means that the only excuse for the failure to deliver Energy by Supplier or the failure to receive Energy by the Customer is Force Majeure or the other Party's failure to perform.
- l. "Force Majeure" means an event or circumstance which prevents one Party from performing its obligations, which event or circumstance was not anticipated as of the date of execution of this Agreement, which is not within the reasonable control of, or result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided, including, without limitation, a curtailment of the delivery of electric energy or other interruption of transmission service by Transmission Providers or Transmission Owners. Force Majeure shall not be based on (i) Customer's inability economically to use the Energy purchased hereunder; (ii) a business interruption at the Customer's Facilities due to equipment/mechanical failure, destruction or related disturbance, strike, work stoppage, work slow down or other labor related disturbance; (iii) disconnection or suspension of service to the Customer by the Electric Distribution Utility; (iv) Supplier's ability to sell the Energy at a price greater than the Energy Charge or the price set forth in the Pricing Schedule, as applicable; or (v) Supplier's inability economically to produce or procure the Energy sold hereunder. If an event of Force Majeure continues for a period of 90 days, the party not claiming Force Majeure may terminate this agreement, and neither party shall have any further liability to the other party hereunder.
- m. "Full Requirements Energy" means that Customer shall purchase all of its retail Energy requirements for Customer's Facilities from Supplier and no other source and that Customer shall not resell any of the Energy provided hereunder to any third party. Full Requirements Energy includes all components included in the Electric Distribution Utility's standard offer generation service, including all energy, capacity, ancillary services, firm transmission service, network integrated transmission services, transmission and distribution losses, congestion management, MISO resource adequacy requirements and compliance with Ohio renewable energy portfolio standards.
- n. "Interest Amount" means with respect to an Interest Period, the aggregate sum of the amounts of interest calculated, for each day in that Interest Period on the principal amount of Cash Collateral held by the Supplier on that day, as follows: (i) the amount of cash held on that day; multiplied by (ii) the Cash Interest Rate for that day; divided by (iii) 360.
- o. "Interest Period" means the period from (and including) the last Business Day on which an Interest Amount was transferred (or if no Interest Amount has yet been transferred, the Business Day on which Cash Collateral was transferred to the Exposed Party) to (but excluding) the Business Day on which the current Interest Amount is to be transferred.
- p. "Interest Rate" means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in The Wall Street Journal under "Money Rates" on such day (or if not published on such day on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.
- q. "kW" means kilowatt.

- r. "kWh" means kW's per hour.
- s. "Letter(s) of Credit" means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a U.S. branch of a foreign bank with such bank having a credit rating of at least A- from S&P or A3 from Moody's, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.
- t. "Material Adverse Change" means, with respect to either Party or either Party's guarantor if one exists, that (i) there is any material change in the condition (financial or otherwise), net worth, assets, properties or operations, or in economic conditions, which, taken as a whole, can reasonably be anticipated to impair the ability of such Party or such Party's guarantor to fulfill its obligations; or (ii) there is reasonable grounds to believe that the creditworthiness of such Party has become unsatisfactory or its ability to perform under this Agreement has been materially impaired.
- u. "Security" means (i) cash (ii) Letters of Credit, or (iii) such other form of security acceptable to the Supplier.
- v. "Term" has the meaning set forth on the Cover Form.

PRICING SCHEDULE

to the Retail Power Sales Agreement

No. 1

- Initial Pricing Schedule to Agreement (check if applicable)**
 Amendment to Prior Agreement (check if applicable)
 Amendment No. 1

Customer Information

Customer Name and DBA (if any):	City of Mason		
Billing Street Address:	6000 Mason-Montgomery Road		
City: Mason	State: OH	Zip: 45040	
Phone: 513-229-8520	Fax:	Website:	

Primary Contact

Name: Larry Rudd	Office Phone: 513-229-8520 ext. 2023
Mobile:	Fax: Email Address: lrudd@masonoh.org

Pricing Description: Generation and Transmission at a percent discount from regulated utility Duke Energy Ohio's Standard Service Offer in effect each month. DERS will guarantee savings off your then current price of generation and transmission, as follows: 22% discount for energy delivered in 2009, 12% discount for energy delivered in 2010 and 7% discount for energy delivered in 2011.

Transmission and Ancillary Service Charges: Pricing includes capacity, energy, transmission, ancillary services, and losses.

Additional Terms: Customer shall notify DERS as soon as practicable of any known or expected significant changes in usage.

Separate Pricing Schedule/Amendment (as applicable) – Acceptance and Approval

CITY OF MASON

DUKE ENERGY RETAIL SALES, LLC

Signature: _____

Signature: _____

Print Name: Eric Hansen

Print Name: Chris A. Eyer

Title: City Manager

Title: Sales Manager

Date: _____

Date: _____

Attachment A

Customer Accounts To Be Exclusively Served By Duke Energy Retail Sales, LLC During The Term				
Account No.	Current Electric Distribution Utility	Meter Serial No.	Meter Read Date	Service Initiation Date
1.	4530-2173-01-3	DEO		
2.	4900-2087-02-1	DEO		
3.	4660-2146-02-2	DEO		
4.	5370-0845-20-2	DEO		
5.	5420-0723-20-4	DEO		
6.	7320-2170-01-0	DEO		
7.	8810-2125-04-0	DEO		
8.	0070-0279-21-9	DEO		
9.	1880-0721-21-7	DEO		
10.	1930-0829-21-2	DEO		
11.	3860-0779-21-1	DEO		
12.	5160-2083-02-4	DEO		
13.	7230-0707-21-2	DEO		
14.	9960-0279-21-8	DEO		
15.	8230-0866-21-9	DEO		
16.	8250-0705-21-0	DEO		
17.	7610-0678-02-7	DEO		
18.	2240-2100-02-1	DEO		
19.	9180-2084-02-7	DEO		
20.	5350-3678-01-9	DEO		
21.	6350-3678-01-4	DEO		
22.	0430-2054-01-6	DEO		
23.	0900-0098-22-9	DEO		
24.	1860-0854-01-8	DEO		
25.	2550-2228-01-6	DEO		
26.	4820-0869-20-9	DEO		
27.	5730-3600-01-0	DEO		
28.	5840-2232-01-1	DEO		
29.	5840-3607-01-9	DEO		
30.	4090-2041-03-8	DEO		
31.	9490-0488-20-8	DEO		
32.	9600-2230-01-9	DEO		
33.	3370-0098-21-0	DEO		
34.	3420-2149-01-6	DEO		
35.	0850-3568-01-3	DEO		
36.	1710-2090-01-2	DEO		
37.	3720-2006-02-8	DEO		
38.		DEO		