

FULL REQUIREMENTS SERVICE AGREEMENT
BETWEEN
MONONGAHELA POWER COMPANY
dba ALLEGHENY POWER
AND
COLUMBUS SOUTHERN POWER COMPANY

DATED

FULL REQUIREMENTS SERVICE AGREEMENT

Articles and Provisions

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EXHIBITS

- A. Allocation of Responsibility For PJM Charges As Between Buyer And Seller
- B. Form of Notice

FULL REQUIREMENTS SERVICE AGREEMENT

THIS FULL REQUIREMENTS SERVICE AGREEMENT ("Agreement" or "FSA") is made and entered into as of ____ ("Effective Date"), by and between Monongahela Power Company, dba Allegheny Power, hereinafter referred to as "Seller" and Columbus Southern Power Company, hereinafter referred to as "Buyer" (each hereinafter referred to individually as "Party" and collectively as "Parties").

WITNESSETH:

WHEREAS, the PUCO directed Buyer and Seller to explore the possibility of transferring the Subject Service Territory to Buyer; and

WHEREAS, Buyer and Seller have negotiated and executed an Asset Purchase Agreement dated ____, 2005 ("Asset Purchase Agreement") for the purchase of the Subject Service Territory by Buyer; and

WHEREAS, Buyer now has electric service obligations in the Subject Service Territory and desires to purchase Full Requirements Service through an Agreement with the Seller; and

WHEREAS, Seller desires to sell Full Requirements Service and Buyer desires to purchase such Full Requirements Service in the Subject Service Territory on a firm and continuous basis during the Delivery Period; and

NOW, THEREFORE, and in consideration of the foregoing, and of the mutual promises, covenants, and conditions set forth herein, and other good and valuable consideration, the Parties hereto, intending to be legally bound by the terms and conditions set forth in this Agreement, hereby agree as follows:

ARTICLE I DEFINITIONS

In addition to terms defined elsewhere in this Agreement, the following definitions shall apply hereunder:

"Affiliate" means, with respect to any entity, any other entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, such entity. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

"ALM Operating Reserve Adjustment" shall have the meaning ascribed to it in Section 4.2(c) (Load Response Programs).

"Ancillary Services" shall have the meaning ascribed thereto in the PJM Agreements.

"Auction Revenue Rights" or **"ARR"** means entitlements allocated annually by PJM to firm transmission service customers under the PJM OATT that entitle the holder to receive an allocation of the revenues from PJM's annual FTR auction.

"Bankrupt" means, with respect to any entity, such entity: (i) voluntarily files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar law; (ii) has any such petition filed or commenced against it by its creditors and such petition is not dismissed within sixty (60) calendar days of the filing or commencement; (iii) makes an assignment or any general arrangement for the benefit of creditors; (iv) otherwise becomes insolvent, however evidenced; (v) 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 (vi) is generally unable to pay its debts as they fall due.

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

"Capacity" means "Unforced Capacity" as set forth in the PJM Agreements, or any successor measurement of the capacity obligation of a Load Serving Entity as may be employed in PJM (whether set forth in the PJM Agreements or elsewhere).

"Closing" will have the meaning given to that term by the Asset Purchase Agreement.

"Congestion Revenue Rights" or **"CRR"** means the current or any successor congestion management mechanism or mechanisms as may be employed by PJM (whether set forth in the PJM Tariff or elsewhere) for the purpose of allocating financial congestion hedges.

"Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions, PJM charges, and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its DS Load obligations or entering into new arrangements that replace the Transaction upon termination; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

"Default Service Load" or **"DS Load"** means the metered total sales adjusted to the generator level, plus Unaccounted For Energy, expressed in MWh for retail customers being served by Buyer in the Subject Service Territory, as such sales vary from hour to hour, as such territory exists on the Effective Date. For purposes of clarification, DS Load shall not include changes in the above mentioned service territory that occur as a result of a merger, consolidation, or acquisition of another entity or a result of a significant franchise territory swap with another entity.

"Delivery Period" means the period of delivery of the Full Requirements Service under this Agreement, beginning at the Effective Time and ending at 11:59 EPT on May 31, 2007.

"Delivery Point" means (i) prior to the "Delivery Point Aggregation Date," the LMP points in the PJM Control Area that make up the aggregate APS Zone, or any successor, superceding or amended aggregates for the APS Zone as defined by PJM over the term of this Agreement and (ii) from and after the Delivery Point Aggregation Date, the LMP points in the PJM Control Area that make up the aggregate AEP Zone or any successor, superceding or amended aggregates for the AEP Zone as defined by PJM over the term of this Agreement.

"Delivery Point Aggregation Date" means the date on which the LMP points associated with the Subject Service Territory are assimilated by PJM into the AEP Zone from the APS Zone.

"Eastern Prevailing Time" or "EPT" means Eastern Standard Time or Eastern Daylight Savings Time, whichever is in effect on any particular date.

"Effective Time" will have the meaning given to that term by the Asset Purchase Agreement.

"Emergency Energy" shall have the meaning ascribed to it in the PJM Agreements.

"Energy" means three-phase, 60-cycle alternating current electric energy, expressed in units of kilowatt-hours or megawatt-hours.

"Equitable Defenses" means any bankruptcy, insolvency, reorganization and other laws affecting creditors' rights generally, and with regard to equitable remedies, the discretion of the court before which proceedings to obtain same may be pending.

"FERC" means the Federal Energy Regulatory Commission or its successor.

"Financial Transmission Right" or "FTR" means a financial instrument that entitles the holder to receive compensation from PJM for certain congestion-related transmission charges that arise when the grid is congested and differences in locational marginal prices result from the redispatch of generators out of merit order to relieve congestion in the PJM day-ahead market.

"Firm Energy" means Energy that Seller shall sell and deliver and Buyer shall purchase and receive unless relieved of their respective obligations without liability by Force Majeure, but only to the extent that, and for the period during which, either Party's performance is prevented by Force Majeure.

"Force Majeure" means an event or circumstance that prevents one Party from performing its obligations under the Transaction, which event or circumstance was not foreseen as of the date the Transaction is entered into, which is not within the reasonable control of, or the result of the negligence of, the affected Party and which, by the exercise of due diligence, the Party is unable to mitigate or avoid or cause to be avoided. Notwithstanding the foregoing, under no circumstance shall an event of Force Majeure be based on: (i) the loss or failure of Seller's supply; (ii) Seller's ability to sell the Full Requirements Service at a price greater than that received under the Transaction; (iii)

curtailment by a Transmitting Utility; or (iv) Buyer's ability to purchase the Full Requirements Service at a price lower than paid under the Transaction.

"Full Requirements Service" means Seller shall supply Firm Energy to the Delivery Point, as the same may fluctuate in real time to serve Retail Load, limited in any hour to the DS Load in the Subject Service Territory during the applicable billing period and capacity credits, congestion costs, and losses, all as set forth in Exhibit A and elsewhere in this Agreement.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner.

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

"Interest Rate" means, for any date, the lesser of: (i) 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 (ii) the maximum rate permitted by applicable law.

"Load Serving Entity" or "LSE" shall have the meaning ascribed to it in the PJM Agreements.

"Locational Marginal Price" or "LMP" means the hourly integrated market clearing marginal price for energy at the location the energy is delivered or received.

"Losses" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of the Transaction, determined in a commercially reasonable manner.

"Monthly Settlement Amount" means with respect to any calendar month during the Delivery Period, the product of the Settlement Price and Monthly Settlement Load and any other adjustments as set forth in this Agreement.

"Monthly Settlement Date" means, with respect to any calendar month of the Delivery Period, the date determined to be the PJM Settlement Date pursuant to the PJM Agreements.

"Monthly Settlement Load" means, with respect to any calendar month during the Delivery Period, DS Load.

"MWh" means one megawatt of electric power used over a period of one hour, which shall be rounded in a manner consistent with standards in the PJM Agreements. The current rounding standards are to the nearest one-thousandth of a megawatt hour.

"NERC" means the North American Electric Reliability Council or any successor organization thereto.

"Network Integration Transmission Service" shall have the meaning ascribed to it in the PJM Agreements.

"Non-Performance Damages" means any direct damages, calculated in a commercially reasonable manner, that a Party incurs as a result of the other Party's failure to schedule and deliver or receive, as applicable, the Full Requirements Service. Direct damages may include, but are not limited to: (i) the positive difference (if any) between the price of Full Requirements Service hereunder and the price at which the Buyer or Seller is able to purchase or sell (as applicable) Full Requirements Service (or any components of Full Requirements Service it is able to purchase or sell) from or to third parties, including PJM; (ii) Emergency Energy charges; and (iii) additional transmission or congestion costs incurred to purchase or sell Full Requirements Service.

"Operating Reserve" shall have the meaning ascribed to it in the PJM Agreements.

"PUCO" means the Public Utility Commission of Ohio.

"PJM" means the PJM Interconnection, LLC or any successor organization thereto.

"PJM Active Load Management" shall have the meaning ascribed to it in the PJM Agreements.

"PJM Agreements" means the PJM OATT, PJM Operating Agreement, PJM RAA, PJM West RAA, and any other applicable PJM manuals, market rules, procedures or documents, or any successor, superceding or amended versions that may take effect from time to time.

"PJM Control Area" shall have the meaning ascribed to it in the PJM Agreements.

"PJM OATT" or "PJM Tariff" means the Open Access Transmission Tariff of PJM or the successor, superceding or amended versions of the Open Access Transmission Tariff that may take effect from time to time.

"PJM Operating Agreement" means the Operating Agreement of PJM or the successor, superceding or amended versions of the Operating Agreement that may take effect from time to time.

"PJM Planning Period" shall have the meaning ascribed to it in the PJM Agreements. Currently, the PJM Planning Period is the twelve month period beginning June 1 and extending through May 31 of the following year.

"PJM RAA" means the PJM Reliability Assurance Agreement or any successor, superceding or amended versions of the PJM Reliability Assurance Agreement that may take effect from time to time.

"PJM Settlement Date" means the date on which payments are due to PJM for services provided by PJM in accordance with the PJM Agreements. Such date currently occurs on the first Business Day after the nineteenth (19th) calendar day of the month following service.

"PJM West RAA" means the PJM West Reliability Assurance Agreement or the successor, superceding or amended versions of the PJM West Reliability Assurance Agreement that may take effect from time to time.

"Settlement Amount" means, with respect to the Transaction and the Non-Defaulting Party, the Losses or Gains, and Costs, expressed in U.S. Dollars, which such Party incurs as a result of the liquidation of the Transaction pursuant to Article 12 (Events of Default – Remedies). The calculation of a Settlement Amount for the Transaction shall exclude any Non-Performance Damages calculated pursuant to Section 12.2(b)(ii) (Remedies) for the Transaction. For the purposes of calculating the Termination Payment, the Settlement Amount shall be considered an amount due to the Non-Defaulting Party under this Agreement if the total of the Losses and Costs exceeds the Gains, and shall be considered an amount due to the Defaulting Party under this Agreement if the Gains exceed the total of the Losses and Costs.

"Settlement Price" means the following amount during the following period:

1/1/2006 – 5/31/2007

\$45/MWh.

"Subject Service Territory" means the "Certified Territory" (as defined by Section 4933.81(G) of the Ohio Rev. Code) of Seller in Ohio on file with the PUCO as of the execution date of the Asset Purchase Agreement.

"Transaction" means the purchase by Buyer and the sale by Seller of the Full Requirements Service pursuant to this Agreement.

"Transmitting Utility" means the utility or utilities and their respective control area operators and their successors, transmitting Full Requirements Service.

"Unaccounted For Energy" means the difference between the Buyer's hourly system load and the sum of: (i) the estimated hourly customer loads (interval metered and profiled); and (ii) electrical losses, as such Unaccounted For Energy is determined in the Buyer's retail load settlement process.

"Zone" means an area within the PJM Control Area, as set forth in the PJM OATT, the PJM RAA and the PJM West RAA.

ARTICLE II

TERMS AND CONDITIONS OF FULL REQUIREMENTS SERVICE

- 2.1 Seller's Obligation To Provide Service. From and after the Effective Time, Seller shall provide Full Requirements Service on a firm and continuous basis such that the Full Requirements Service is supplied during the Delivery Period.
- 2.2 Buyer's Obligation to Take Service. From and after the Effective Time, Buyer shall accept Full Requirements Service as provided by Seller pursuant to Section 2.1 (Seller's Obligation to Provide Service), and shall pay Seller the Monthly Settlement Amounts for the Full Requirements Service on the applicable Monthly Settlement Date in accordance with Section 7.3 (Payments of the Invoice).
- 2.3 Network Integration Transmission Service and Distribution Service. Buyer shall be responsible, at its sole cost and expense, for the provision of Network Integration Transmission Service within PJM and distribution service from the Delivery Point necessary to serve the DS Load. With respect to the DS Load, Buyer is responsible, at its sole cost and expense, for future PJM charges assessed to network transmission customers for PJM-required transmission system enhancements pursuant to the PJM Regional Transmission Expansion Plan, and for future PJM charges assessed to network transmission customers for transition costs related to the elimination of through-and-out transmission rates.
- 2.4 Other Changes in PJM Charges. Except for charges specifically allocated to Buyer pursuant to Section 2.3, any new charges implemented by PJM during the term hereunder will be allocated as between Seller and Buyer in a manner similar to the current PJM charges as illustrated on Exhibit A and elsewhere in this agreement.
- 2.5 Status of Seller. Seller, for purposes of providing the Full Requirements Service to Buyer hereunder, is agent, pursuant to the PJM Agreements, for Buyer who is the Load Serving Entity as that term is defined in the PJM Agreements. Prior to the Closing, Buyer and Seller shall execute and submit to PJM a PJM Declaration of Authority for this Agreement.
- 2.6 Sales for Resale. All Full Requirements Service provided by Seller to Buyer shall be sales for resale, with Buyer reselling such Full Requirements Service to DS Load customers.
- 2.7 Governing Terms. This Agreement, including all exhibits hereto, shall form a single integrated agreement between Buyer and Seller.

ARTICLE III SCHEDULING, FORECASTING, AND INFORMATION SHARING

- 3.1 Scheduling. Seller shall schedule the Full Requirements Service pursuant to the PJM Agreements. Buyer will provide to PJM all information required by PJM, for the purpose of calculating Seller's Full Requirements Service obligations.
- 3.2 Load Forecasting. Buyer shall provide to Seller a daily, twenty-four hour, hour-by-hour estimated load schedule for Seller's Full Requirements Service for the Transaction hereunder by no later than 9:00 a.m. EPT at least one Business Day prior to the delivery day. Buyer shall provide annually a load forecast for each month of the year no later than November 1 of prior year or, if the Closing occurs after November 1, 2005, within thirty (30) days of the Closing. Furthermore, Buyer shall promptly notify Seller if Buyer's load forecast for a month varies by more than five percent of the total Energy shown for such month from the annual load forecast for such month. Buyer will prepare and submit all such information to Seller in good faith, but makes no warranty as to its accuracy. Buyer will have no liability for any inaccuracy in such information.

ARTICLE IV SPECIAL TERMS AND CONDITIONS

4.1 Congestion and Congestion Management

- (a) Seller will be responsible for any congestion charges incurred to supply the Full Requirements Service to the DS Load during the Delivery Period, both before and after any Delivery Point Aggregation Date(s). For the avoidance of doubt, this obligation shall terminate upon the termination of this Agreement as set forth in Section 5.1.
- (b) Notwithstanding Section 2.5 (Status of Seller), Buyer shall transfer or assign to Seller, Buyer's rights to CRRs, including the right to nominate such CRRs, for the Delivery Period to which Buyer is entitled as an LSE for the DS Load pursuant to the PJM Agreements, provided that with respect to the 2005/2006 PJM Planning Period, Buyer will not be required to transfer to Seller any CRRs in excess of the CRRs transferred by Seller to Buyer under the Asset Purchase Agreement relating to that period. All rights and obligations associated with such CRRs will accrue to the Seller through the transfer or assignment from Buyer to Seller. The allocation of CRRs associated with the DS Load will be in accordance with the PJM Agreements.
- (c) Notwithstanding any assimilation of the LMP points associated with the Subject Service Territory into the AEP Zone for other purposes, Buyer agrees that it will not request or take any other actions to cause PJM to

modify the set of generation resources on which the CRR allocation for the Subject Service Territory is based from the set of generation resources associated by PJM with the APS Zone to the set of generation resources historically associated by PJM with the AEP Zone effective earlier than June 1, 2007 without the written consent of Seller to an earlier effective date.

4.2 Load Response Programs. Buyer will manage its load response programs in accordance with the provisions of its applicable riders and retail electric service tariffs, as amended and approved by the PUCO from time to time or distribution utility customer contracts, as amended by the distribution utility from time to time.

- (a) Buyer shall be responsible for complying with all PJM Active Load Management program operating rules (including resource nominations, compliance reports, load drop estimates, and special studies) and any penalties assessed in accordance with the PJM Agreements for failure to implement its load response programs when so requested by PJM. Buyer shall be responsible for maintaining and operating any equipment currently relied upon to operate existing load response programs.
- (b) Buyer shall retain all of the benefits associated with its load response programs and shall be responsible for all customer incentive payments.
- (c) Buyer shall reimburse Seller for real time Operating Reserve costs incurred by Seller as a result of Buyer's operation of its load response programs, which reimbursement shall be equal to the product of the: (i) estimated hourly load reduction, (ii) the real time Operating Reserve charge; and (iii) 100%, such reimbursement to be referred to as the "ALM Operating Reserve Adjustment."
- (d) The obligations addressed in 4.2 (a), (b) and (c) above do not apply to any load reduction initiated by a DS Load customer through the PJM Economic Load Response Program or PJM Emergency Load Response Program. Responsibility for any subsequent PJM charges associated with the PJM Economic Load Response Program or PJM Emergency Load Response Program will be allocated as between Seller and Buyer in a manner similar to the current PJM charges as illustrated on Exhibit A or elsewhere herein.

4.3 Load Management. Buyer covenants with respect to the DS Load that: (i) Buyer shall purchase the Full Requirements Service from Seller for the purpose of fulfilling Buyer's retail supply obligation to the DS Load in the Subject Service Territory only; (ii) Buyer shall enforce those contractual and tariff provisions with respect to its retail service customers that comprise part of the DS Load and that affect the total of the retail supply amount of the DS Load; (iii) Buyer shall participate in load response and demand-side management initiatives to the extent required by

Buyer's retail tariffs applicable to the DS Load. If Buyer enters into any special contract offering discounted rates where the effect of such special contract offering is to increase the retail supply amount of the DS Load with respect to the customer receiving such special contract, Buyer will be responsible for the cost of serving the increased DS Load of that customer. A change in the retail tariff rate schedule under which a customer takes service from Buyer to a different tariff rate schedule and/or any increase in the load of a customer taking service from Buyer under a retail tariff rate schedule, will not constitute an increase in supply under a special contract.

4.4 PJM E-Accounts. Buyer and Seller shall work with PJM to establish any PJM E-Accounts necessary for Seller to provide Full Requirements Service.

4.5 Title Transfer. Title to, possession of, and risk of loss (except for electrical system transmission and distribution losses) of Full Requirements Service scheduled and received or delivered hereunder shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that Seller shall have good title to the Full Requirements Service sold and delivered hereunder, and that Seller shall have the right to sell such Full Requirements Service to Buyer, free and clear of all liens, security interests, claims and encumbrances thereto or therein by any person. Nothing contained in this Agreement is intended to create or increase any liability of Buyer to any third party beyond any such liability, if any, that would otherwise exist under the PJM Agreements or under applicable law if Buyer had not taken title and/or if title had remained with Seller.

4.6 Reliability Guidelines. Each Party agrees to adhere to the applicable operating policies, criteria and/or guidelines of the NERC, PJM, their successors, and any regional or sub regional requirements.

4.7 PJM Membership. For the period of time that this Agreement is in effect, Seller shall be: (i) a member in good standing of PJM; and (ii) qualified as a PJM "Market Buyer" and "Market Seller" pursuant to the PJM Agreements. For the period of time that this Agreement is in effect, Buyer shall be: (i) a member in good standing of PJM; and (ii) qualified as a PJM "Load Serving Entity" pursuant to the PJM Agreements.

4.8 FERC Authorization. For the period of time that this Agreement is in effect, Seller shall have FERC authorization to make sales of energy, capacity and ancillary services at market based rates.

4.9 Remedy for Seller's Failure to Deliver. If Seller fails to schedule and deliver all or part of the Full Requirements Service, and such failure is not excused by Force Majeure or by Buyer's failure to perform, then in addition to any other remedies available under law or in equity to Buyer or under Article 12, Seller will pay Buyer, on the date that payment would otherwise be due for the month in which the failure occurred, an amount for such deficiency equal to positive amount, if any, of Buyer's Non-Performance Damages.

- 4.10 Remedy for Buyer's Failure to Receive. If Buyer fails to receive all or part of the Full Requirements Service, and such failure is not excused by Force Majeure or by Seller's failure to perform, then in addition to any other remedies available under law or in equity to Seller or under Article 12, Buyer will pay Seller, on the date that payment would otherwise be due for the month in which the failure occurred, an amount for such deficiency equal to positive amount, if any, of Seller's Non-Performance Damages.

ARTICLE V TERM AND SURVIVAL

- 5.1 Term. Unless this Agreement is terminated prematurely pursuant to Article 12 of this Agreement and unless otherwise agreed upon by Buyer and Seller, this Agreement shall continue in full force and effect from the Effective Date until May 31, 2007, at which time this Agreement shall terminate automatically without the need for action by either Party; provided, however, that if the Asset Purchase Agreement is terminated without the closing of the sale of the Subject Service Territory having occurred, then this Agreement shall terminate without further obligation or liability for either Party. Neither Party shall have any rights to extend the term of this Agreement.
- 5.2 Survival. All provisions of this Agreement that must, in order to give full force and effect to the rights and obligations of the Parties hereto, survive termination or expiration of this Agreement, shall so survive, including, without limitation, Articles 9, 10, 12 and 13.

ARTICLE VI DETERMINATION OF DELIVERED QUANTITIES

- 6.1 Monthly Settlement Load. The amount of Monthly Settlement Load with respect to any calendar month during the Delivery Period shall be determined in terms of megawatt-hours (MWh) of Energy.

The MWh of Energy shall be equivalent to the amount of Energy reported as the Seller's Full Requirements Service obligation by Buyer to PJM, at the generator level, in accordance with Buyer's initial and subsequent retail load settlement processes. Such Energy reported by Buyer to PJM for the subsequent retail load settlement process shall include Energy adjustments associated with Buyer's operation of its load response programs as necessary to ensure that Seller is credited with energy deliveries equal to the amount by which load was reduced due to Buyer's operation of its load response programs, as determined by Buyer. If required by PJM, Seller shall confirm such adjustments.

ARTICLE VII BILLING AND SETTLEMENT

7.1 Billing. Unless otherwise agreed to by the Parties, on or before the sixth (6th) Business Day of each month, Buyer shall deliver to Seller, via electronic transmission or other means agreed to by the Parties, an invoice ("Invoice") that sets forth the total amount due for the previous calendar month for the Transaction. The Invoice shall detail the following:

- (a) Monthly Settlement Load
- (b) Settlement Price
- (c) Monthly Settlement Amount
- (d) PJM billing adjustments
- (e) ALM Operating Reserve Adjustment
- (f) Any other adjustments set forth in this Agreement

7.2 PJM Billing. Buyer and Seller shall direct PJM to invoice Seller and Buyer for charges and credits relating to Seller's and Buyer's rights and obligations under this Agreement as set forth in Exhibit A attached hereto and made a part hereof. If PJM is unable to invoice charges or credits in accordance with Exhibit A, Buyer shall rectify such PJM invoice discrepancy in the Invoice sent pursuant to Section 7.1 (Billing). To the extent that either Party pays or is required to pay for any service or charge that is the responsibility of the other Party, then the paying Party shall be reimbursed for such costs by the responsible Party either through cash payment or by credit against other amounts owed to the responsible Party by the paying Party in accordance with this Section.

- (b) The Parties agree that the PJM bill may change from time to time. Allocation of any charges that are reflected in a PJM bill that are not included on or are inconsistent with Exhibit A will be determined pursuant to Sections 2.3 (Network Integration Transmission Service and Distribution Service), 2.4 (Other Changes in PJM Charges), and 15.11 (PJM Agreement Modifications) of this Agreement.
- (c) The Parties shall work with PJM to adjust the billing determinants upon which SECA charges and credits are allocated among PJM Zones to ensure that the aggregate SECA charges and credits for each Party will not be altered by the transfer of customers in the Subject Service Territory from the Seller to Buyer.

7.3 Payments of the Invoice. On the Monthly Settlement Date, Buyer will pay to Seller the total amount due as shown in the applicable Invoice. All payments shall be made by "Electronic Funds Transfer" (EFT) via "Automated Clearing House" (ACH), to the bank designated by Seller on Exhibit B. Buyer will execute (transmit to its banks) an ACH request to transfer funds to Seller's designated bank account on the Monthly Settlement Date. Payment of Invoices shall not

relieve the paying Party from any other responsibilities or obligations it has under this Agreement (other than the obligation to make such payment), nor shall such payment constitute a waiver of any claims arising hereunder.

7.4 Netting of Payments. Buyer and Seller shall discharge mutual debts and payment obligations due and owing to each other under this Agreement, as of the Monthly Settlement Date, such that all amounts owed by each Party to the other Party shall be reflected in a single amount due to be paid by the Party who owes it and received by the other Party, provided that the calculation of the net amount shall not include any disputed amounts being withheld pursuant to Section 7.5 (Billing Disputes and Adjustment of Invoices).

7.5 Billing Disputes and Adjustments of Invoices. Within twelve (12) months of the date on which an Invoice is issued, Buyer may, in good faith, adjust the Invoice to correct any errors, provided that Buyer has paid by the Monthly Settlement Date any portion of an Invoice that is not adjusted. The adjustment shall include interest calculated at the Interest Rate from the original due date to the date of payment. Buyer shall provide Seller a written explanation of the basis for the adjustment.

(a) Within twelve (12) months of the date on which an Invoice is issued or an Invoice is adjusted pursuant to Section 7.5(a) (Billing Disputes and Adjustment of Invoices), Seller may, in good faith, dispute the correctness of such Invoice or adjustment, pursuant to the provisions of Article 13 (Dispute Resolution), provided that Seller has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed. Seller will provide Buyer a written explanation of the basis for the dispute.

(b) Within twelve (12) months of the date on which a PJM bill is issued, Buyer or Seller may, in good faith, dispute the correctness of any such PJM bill, pursuant to the provisions of Article 13 (Dispute Resolution), provided that the disputing Party has paid by the Monthly Settlement Date any portion of an Invoice that is not disputed.

7.6 Interest on Unpaid Balances. Interest on delinquent amounts, other than amounts in dispute as described in Section 7.5 (Billing Disputes and Adjustment of Invoices), shall be calculated at the Interest Rate from the original due date to the date of payment.

ARTICLE VIII TAXES

8.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize taxes, so long as neither Party is materially adversely affected by such efforts.

8.2 Taxes. As between the Parties: (i) Seller is responsible for the payment of all taxes imposed by any Governmental Authority on the wholesale sales of Full Requirements Service under this Agreement; and (ii) Buyer is responsible for the payment of all taxes imposed by any Governmental Authority on retail sales of Full Requirements Service under this Agreement.

- (a) Any Party paying taxes that should have been paid by the other Party pursuant to Section 8.2(a) (Taxes), shall be reimbursed by such other Party in the next invoice issued pursuant to Section 7.1 (Billing).

ARTICLE IX INDEMNIFICATION

9.1 Seller's Indemnification for Third-Party Claims. Seller shall indemnify, hold harmless, and defend Buyer and its Affiliates, and their respective officers, directors, shareholders, partners, members, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Buyer's Indemnitees") from and against any and all claims, demands or suits (by any person), liabilities, costs, losses, damages, obligations, payments and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Government Authorities in any action or proceeding between Buyer and a third party or Seller for damage to property of unaffiliated third parties, injury to or death of any person, including Buyer's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Seller and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Seller's performance under this Agreement, Seller's exercise of rights under this Agreement, or Seller's breach of this Agreement.

9.2 Buyer's Indemnification for Third-Party Claims. Buyer shall indemnify, hold harmless, and defend Seller and its Affiliates, and their respective officers, directors, shareholders, partners, members, employees, agents, contractors, subcontractors, invitees, successors, representatives and permitted assigns (collectively, "Seller's Indemnitees") from and against any and all claims, demands or suits (by any person) liabilities, costs, losses, damages, obligations, payments and expenses including reasonable attorney and expert fees, disbursements actually incurred, and any penalties or fines imposed by Government Authorities in any action or proceeding between Seller and a third party or Buyer for damage to property of unaffiliated third parties, injury to or death of any person, including Seller's employees or any third parties, to the extent directly caused by the gross negligence or willful misconduct of Buyer and/or its officers, directors, employees, agents, contractors, subcontractors or invitees arising out of or connected with Buyer's performance under this Agreement, Buyer's exercise of rights under this Agreement, or Buyer's breach of this Agreement.

- 9.3 Indemnification Procedures. If either Party intends to seek indemnification under Sections 9.1 (Seller's Indemnification for Third-Party Claims) or 9.2 (Buyers Indemnification for Third-Party Claims), as applicable, from the other Party, the Party seeking indemnification shall give the other Party notice of such claim within ninety (90) days of the later of the commencement of, or the Party's actual knowledge of, such claim or action. Such notice shall describe the claim in reasonable detail, and shall indicate the amount, estimated if necessary, of the claim that has been, or may be, sustained by said Party. To the extent that the other Party will have been actually and materially prejudiced as a result of the failure to provide such notice, such notice will be a condition precedent to any liability of the other Party under the provisions for indemnification contained in this Agreement. Neither Party may settle or compromise any claim without the prior consent of the other Party; provided, however, said consent shall not be unreasonably withheld or delayed.

ARTICLE X

LIMITATIONS ON LIABILITY

- 10.1 Limitation of Remedies, Liability and Damages. EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY 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 HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR 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 BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE

LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE XI FORCE MAJEURE

- 11.1 Force Majeure. The Parties shall be excused from performing their respective obligations under this Agreement (other than the obligation to make payments with respect to performance prior to the event of Force Majeure) and shall not be liable for damages or otherwise due to their failure to perform, during any period that one Party is unable to perform due to an event of Force Majeure, provided that the Party declaring an event of Force Majeure shall: (i) act expeditiously to resume performance; (ii) exercise all commercially reasonable efforts to mitigate or limit damages to the other Party; and (iii) fulfill the requirements set forth in Section 11.2 (Notification).
- 11.2 Notification. A Party unable to perform under this Agreement due to an event of Force Majeure shall: (i) provide prompt written notice of such event of Force Majeure to the other Party, which shall include an estimate of the expected duration of the Party's inability to perform due to the event of Force Majeure; and (ii) provide prompt notice to the other Party when performance resumes.

ARTICLE XII EVENTS OF DEFAULT; REMEDIES

- 12.1 Events of Default. An "Event of Default" shall mean, with respect to a Party ("Defaulting Party"), the occurrence of any of the following:
- (a) 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;
 - (b) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated;
 - (c) the failure of a Party to comply with the requirements of Sections 4.6 (PJM Membership) and 4.7 (FERC Authorization) if such failure is not remedied within three (3) Business Days after written notice;
 - (d) PJM has declared a Party to be in default of any provision of any PJM Agreement, which default prevents a Party's performance hereunder if such failure is not remedied within three (3) Business Days after written notice;

- (e) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) if such failure is not remedied within three (3) Business Days after written notice;
- (f) such Party becomes Bankrupt;
- (g) such Party consolidates with, or merges with or into, or transfers all or substantially all of its assets to, another entity, or assigns the Agreement or any rights, interests, or obligations hereunder, and, at the time of such consolidation, merger, transfer or assign, the resulting, surviving, transferee, or assigned entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of law or pursuant to an agreement reasonably satisfactory to the other Party, such agreement not to be unreasonably withheld.
- (h) the occurrence and continuation of: (i) a default, event of default or other similar condition or event in respect of such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than 50,000,000 (Fifty Million Dollars) with respect to Buyer or \$25,000,000 (Twenty-Five Million Dollars) with respect to Seller, which results in such indebtedness becoming immediately due and payable or; (ii) a default by such Party in making on the due date therefore one or more payments, individually or collectively, in an aggregate amount of not less than 50,000,000 (Fifty Million Dollars) with respect to Buyer or \$25,000,000 (Twenty-Five Million Dollars) with respect to Seller.

12.2 **Remedies.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (the "Non-Defaulting Party"), shall provide written notice to the Defaulting Party and shall have the right to temporarily suspend performance pursuant to Section 12.2(a) or implement all remedies pursuant to Section 12.2(b):

- (a) If an Event of Default has occurred and is continuing, the Non-Defaulting Party shall have the right to suspend performance, provided that such suspension shall not continue for longer than ten (10) Business Days. At any time during or subsequent to the temporary suspension of performance, the Non-Defaulting Party may proceed with the steps outlined in Section 12.2(b). If, by the end of the ten (10) Business Day period of suspension, the Non-Defaulting Party has not commenced the implementation of the remedies pursuant to Section 12.2(b), then the Non-Defaulting Party must resume performance of its obligations under this Agreement.
- (b) In addition to any other remedies available at law or in equity to the Non-Defaulting Party, if an Event of Default has occurred and is continuing,

the Non-Defaulting Party shall have the right to implement all, but not less than all, the following remedies:

- i. designate a day, in such notice, no earlier than the day such notice is effective and no later than twenty (20) (calendar) days after such notice is effective, as an early termination date ("Early Termination Date") for the purposes of determining the Settlement Amount;
- ii. calculate and receive from the Defaulting Party, payment for any Non-Performance Damages and Costs the Non-Defaulting Party incurs as of, or has incurred prior to, the date of the event giving rise to the Event of Default, and from such date until the earlier of: (i) the Early Termination Date (if applicable); or (ii) the Event of Default has been cured by the Defaulting Party; or (iii) the Non-Defaulting Party waives such Event of Default;
- iii. withhold any payments due to the Defaulting Party under this Agreement as an offset to any Non-Performance Damages or Termination Payment, as defined in Section 12.3 (Calculation and Net Out of Settlement Amounts); and
- iv. permanently suspend performance.

12.3 Calculation and Net Out of Settlement Amounts.

- (a) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Transaction as of the Early Termination Date or, to the extent that in the reasonable opinion of the Non-Defaulting Party the Transaction is commercially impracticable to liquidate and terminate or may not be liquidated and terminated under applicable law on the Early Termination Date, as soon thereafter as is reasonably practicable. The Non-Defaulting Party shall aggregate all Settlement Amounts into a single liquidated amount (the "Termination Payment") by netting out: (i) all Settlement Amounts that are due to the Defaulting Party, plus, at the option of the Non-Defaulting Party, any or all other amounts due to the Defaulting Party under this Agreement; against (ii) all Settlement Amounts that are due to the Non-Defaulting Party plus any or all other amounts due to the Non-Defaulting Party, including but not limited to Non-Performance Damages, under this Agreement. The Termination Payment shall be due to or due from the Non-Defaulting Party as appropriate.
- (b) In order to avoid doubt regarding a commercially reasonable calculation for the purposes of calculating the Settlement Amount by the Non-Defaulting Party, the quantity of amounts of Energy, Capacity and other services to have been provided under the Agreement for the period

following the Early Termination Date (the "Termination Quantity") shall be deemed those quantity amounts that would have been delivered on an hourly basis had the Agreement been in effect during the previous calendar year, adjusted for such DS Load changes as have occurred since the previous calendar year. This paragraph will not be construed to limit Buyer's rights when Seller is the Defaulting Party to replace Seller's obligation to provide the Full Requirements Service.

- 12.4 Notice of Termination Payment. As soon as practicable after an Early Termination Date is declared, the Non-Defaulting Party shall provide written notice to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the Non-Defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The owing Party shall make the Termination Payment within five (5) Business Days after such notice is effective.
- 12.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a notice that it intends to dispute the calculation of the Termination Payment ("Termination Payment Dispute Notice"), pursuant to the provisions of Article 13 (Dispute Resolution), and provided, however, that if the Termination Payment is due from the Defaulting Party, the Defaulting Party shall first transfer collateral to the Non-Defaulting Party in an amount equal to the Termination Payment, such collateral to be in a form acceptable to the Non-Defaulting Party by the Termination Payment Date.
- 12.6 Closeout Setoffs. After calculation of a Termination Payment in accordance with Section 12.3 (Calculation and Net Out of Settlement Amounts) if the Defaulting Party would be owed the Termination Payment, the Non-Defaulting Party shall be entitled, at its option and in its discretion, to: (i) set off against such Termination Payment any amounts payable by the Defaulting Party to the Non-Defaulting Party under any other agreements, instruments or undertakings between the Defaulting Party and the Non-Defaulting Party; and/or (ii) to the extent the Transaction is not yet liquidated in accordance with Section 12.3 (a), withhold payment of the Termination Payment to the Defaulting Party. The remedy provided for in this Article shall be without prejudice and in addition to any right of setoff, combination of accounts, lien or other right to which any Party is at any time otherwise entitled (whether by operation of law, contract or otherwise). If any obligation is unascertained, the Non-Defaulting Party may in good faith estimate that obligation and set-off in respect of the estimate, subject to the Non-Defaulting Party accounting to the Defaulting Party when the obligation is ascertained.
- 12.7 Duty to Mitigate. Each Party agrees that it has a duty to mitigate damages and covenants that it will use commercially reasonable efforts to minimize any

damages it may incur as a result of the other Party's failure to perform pursuant to this Agreement.

ARTICLE XIII DISPUTE RESOLUTION

- 13.1 **Arbitration.** This Section shall apply to any dispute, claim, or controversy arising out of or relating to this Agreement (a "Dispute").

In the event of a Dispute, the party alleging such Dispute shall provide written notice thereof to the other party. The parties shall negotiate in good faith to resolve the Dispute for a period of up to thirty (30) days from the date of the written notice. If the parties do not resolve the Dispute within such thirty (30) day period, then upon written notice by either party the Dispute shall be determined as provided herein by binding arbitration administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. One arbitrator shall be selected from the AAA's Roster of Neutrals using the AAA's listing process; provided that he/she shall be a member of the bar of the District of Columbia or of a state of the United States and shall have actively engaged in the practice of law for at least fifteen (15) years. The parties shall return their respective strikes and preferences to the AAA within twenty (20) days of receipt of the list. If a party fails to timely return its strikes and preferences, an arbitrator will be invited to serve based solely on the strikes and preferences timely provided by the other party. All proceedings in arbitration, including all conferences and hearings, will be held in Washington, D.C. unless otherwise agreed between the parties. Consistent with the expedited nature of arbitration, each party will, upon the written request of the other party, promptly provide the other with copies of documents on which the producing party intends to rely in support of or in opposition to any disputed item. Any dispute regarding discovery, or the relevance or scope thereof, shall be determined by the arbitrator, which determination shall be conclusive. At the request of a party, the arbitrator shall have the discretion to order examination by deposition of witnesses to the extent the arbitrator deems such additional discovery relevant and appropriate. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary or confidential information. All discovery shall be conducted in accordance with the AAA rules of procedure. A schedule for completing discovery shall be agreed to between the parties within twenty-one (21) days of the appointment of the arbitrator and submitted to the arbitrator for his/her approval. In the event the parties are unable to agree to a schedule for completing discovery, they shall each submit their discovery proposals to the arbitrator within thirty (30) days of his/her appointment. The arbitrator shall issue a discovery scheduling order within ten (10) days after the parties submit their competing proposals. All discovery shall be completed within one hundred eighty (180) days following the appointment of the arbitrator. Hearing on the merits will be scheduled by the arbitrator on not less than thirty (30) days' notice to each

party. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of the prevailing party's costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrator's fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees, and attorneys' fees. The award shall be in writing, shall be accompanied by a reasoned opinion, and shall be signed by the arbitrator.

The submission of any dispute to Arbitration shall not impair any party's right to seek or obtain from a court of competent jurisdiction a temporary restraining order and other preliminary injunctive relief to preserve the status quo or to seek or obtain another available extraordinary remedy while any such Arbitration is pending or is being appealed or reviewed. Any such action seeking temporary or preliminary equitable relief must be filed in a court of competent jurisdiction located within Franklin County, Ohio and each party expressly submits to personal jurisdiction of any such court located within Franklin County, Ohio.

ARTICLE XIV REPRESENTATIONS AND WARRANTIES

14.1 Representations and Warranties. On the Effective Date and throughout the term of this Agreement, each Party represents and warrants to the other Party that:

- (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 and the Transaction;
- (c) the execution, delivery and performance of this Agreement and the Transaction 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 the like applicable to it;
- (d) this Agreement and the Transaction constitutes its legally valid and binding obligation enforceable against it in accordance with its terms; subject to any Equitable Defenses;
- (e) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it becoming Bankrupt;
- (f) there are no pending, or to its knowledge threatened, actions, suits or proceedings before any Governmental Authority against it or any of its Affiliates that could materially adversely affect its ability to perform its obligations under this Agreement or the Transaction;

- (g) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement or the Transaction;
- (h) it is not relying upon the advice or recommendations of the other Party in entering into this Agreement, it is capable of understanding, understands and accepts the terms, conditions and risks of this Agreement and the Transaction, and the other Party is not acting as a fiduciary for or advisor to it in respect of this Agreement;
- (i) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code;
- (j) it has entered into this Agreement and the Transaction in connection with the conduct of its business and it has the capacity or ability to provide or take delivery of the Full Requirements Service; and
- (k) it is an "eligible contract participant" as defined in Section 1a(12) of the Commodity Exchange Act.

14.2 Additional Understandings. This Agreement is for the purchase and sale of Full Requirements Service that will be delivered in quantities expected to be used or sold over the Delivery Period in the normal course of business, and it is the intention at the inception and throughout the term of this Agreement and the Transaction hereunder that the Agreement will result in physical delivery and not financial settlement, and the quantity of Full Requirements Service that Seller must deliver and Buyer must receive will be determined by the requirements of the DS Load served by Buyer, and, as such, the Agreement does not provide for an option by either Party with respect to the quantity of Full Requirements Service to be delivered or received during performance of the Agreement. This Agreement has been drafted to effectuate Buyer's and Seller's specific intent so that in accordance with Financial Accounting Standards Board Statement No. 133 ("FAS 133"), as amended, Buyer would be able to elect to use accrual accounting for its purchases under this Agreement, while Seller would be able to elect to use either accrual or mark-to-market accounting for its sales under the Agreement. If either Buyer or Seller determines, in good faith, that the intended accounting treatment has become jeopardized, due to a change in interpretations of FAS 133, as amended, or otherwise, then Buyer and Seller agree to meet and use their best efforts to reform the Agreement so that, with the minimum changes possible, the Agreement again qualifies for the intended accounting treatments.

ARTICLE XV MISCELLANEOUS

15.1 Notices. Unless otherwise specified herein, all notices shall be in writing and delivered by hand delivery, overnight mail service or facsimile. Notice by facsimile or hand delivery shall be effective at the close of business on the day

actually received, if received during business hours on a Business Day, and otherwise shall be effective at the close of business on the next Business Day. Notice by overnight mail service shall be effective on the next Business Day after it was sent. A Party may change its address by providing notice of the same in accordance with this Section 15.1. Notice information for Buyer and Seller is shown on Exhibit B.

- 15.2 General. 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. Each Party further agrees that it will not assert, or defend itself, on the basis that any applicable tariff is inconsistent with this Agreement. This Agreement shall not impart any rights enforceable by any third party other than a permitted successor or assignee bound to this Agreement or the Transaction. Any provision declared or rendered unlawful will not otherwise affect the remaining lawful obligations that arise under this Agreement or the Transaction; provided that in such event the Parties shall use commercially reasonable efforts to amend this Agreement or the Transaction in order to give effect to the original intention of the Parties.
- 15.3 Rules of Interpretation. The following principles shall be observed in the interpretation and construction of this Agreement:
- (a) unless otherwise stated, the terms "include" and "including" when used in this Agreement shall be interpreted to mean by way of example only and shall not be considered limiting in any way;
 - (b) all titles and headings used herein are for convenience and reference purposes only, do not constitute a part of this Agreement and shall be ignored in construing or interpreting the obligations of the parties under this Agreement;
 - (c) references to the singular include the plural and vice versa;
 - (d) references to Articles, Sections, Clauses and the Preamble are, unless the context indicates otherwise, references to Articles, Sections, Clauses and the Preamble of this Agreement;
 - (e) in carrying out its rights, obligations and duties under this Agreement, each Party shall have an obligation of good faith and fair dealing.
- 15.4 Audit. Each Party has the right on at least three (3) Business Days prior written notice, at its sole expense and during normal working hours, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made in accordance with Sections 7.1 (Billing) and 7.6 (Interest on Unpaid Balances).

- 15.5 Successors. This Agreement and all of the provisions hereof are binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.
- 15.6 Assignment/Change in Corporate Identity. Neither Party shall assign this Agreement, its rights or obligations hereunder without the prior written consent of the other Party, which consent may not be unreasonably withheld; provided, however, either Party may, without the consent of the other Party (and without relieving itself from liability hereunder),
- (a) transfer, sell, pledge, encumber or assign this Agreement or the accounts, revenues or proceeds hereof in connection with any financing or other financial arrangements,
 - (b) transfer or assign this Agreement to an Affiliate of such Party if such Affiliates' creditworthiness is equal to or higher than that of such Party,
 - (c) transfer or assign this Agreement to any person or entity succeeding to all or substantially all of the assets whose creditworthiness is equal to or higher than that of such Party,
 - (d) provided, however, that in each such case, any such assignee shall agree in writing to be bound by the terms and conditions hereof and so long as the transferring Party delivers such tax and enforceability assurance as the non-transferring Party may reasonably request.
- 15.7 Governing Law. THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF OHIO, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- 15.8 Waiver of Jury Trial EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY.
- 15.9 Amendments. Except as provided in Section 15.10 (PJM Agreement Modifications), this Agreement and the Transaction shall not be amended, modified, terminated, discharged or supplemented, nor any provision hereof waived, unless mutually agreed, in writing, by the Parties. Except as provided in Section 15.10 (PJM Agreement Modifications), the rates, terms and conditions contained in this Agreement and the Transaction are not subject to change under Sections 205 or 206 of the Federal Power Act absent the mutual written agreement of the Parties. Absent the agreement of all parties to the proposed change, the standard of review for changes to this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest"

standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956), and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) (the "Mobile-Sierra" doctrine).

- 15.10 **PJM Agreement Modifications.** If the PJM Agreements are amended or modified so that any schedule or section references herein to such agreements is changed, such schedule or section references herein shall be deemed to automatically (and without any further action by the Parties) refer to the new or successive schedule or section in the PJM Agreements which replaces that originally referred to in this Agreement.
- (a) If the applicable provisions of the PJM Agreements referenced herein, or any other PJM rules relating to the implementation of this Agreement, are changed materially from those in effect on the Effective Date, both Parties shall cooperate to make conforming changes to this Agreement to fulfill the purposes of this Agreement; provided that no such changes shall alter the economic benefits of this Agreement between the Parties.
- 15.11 **Delay and Waiver.** Except as otherwise provided in this Agreement, no delay or omission to exercise any right, power or remedy accruing to the respective Parties hereto upon any breach or default of any other Party under this Agreement shall impair any such right, power or remedy, nor shall it be construed to be a waiver of any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character of any breach or default under this Agreement, or any waiver of any provision or condition of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing.
- 15.12 **Regulatory Approvals.** The Parties agree to cooperate, to the fullest extent necessary, to obtain and maintain in effect any and all required State, Federal or other regulatory approvals for this Agreement.
- 15.13 **Counterparts.** This Agreement may be executed in two or more counterparts, each of which will be considered an original, and all of which together will constitute one and the same instrument.

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

Columbus Southern Power Company

Monongahela Power Company
dba Allegheny Power

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A

**ALLOCATION OF RESPONSIBILITY FOR PJM CHARGES AS BETWEEN
SELLER AND BUYER**

**FINAL BILLING STATEMENT ISSUED ON: MM/DD/YYYY
FOR PERIOD: MM/DD/YYYY TO MM/DD/YYYY**

OPERATING AGREEMENT OF PJM INTERCONNECTION, L.L.C.:			
	Day- ahead	Balancing	Total
Charges:			
Spot Market Energy	Seller	Seller	Seller
Transmission Congestion	Seller	Seller	Seller
Transmission Losses (Point-to-Point)	Seller	Seller	Seller
Regulation			Seller
Spinning Reserve			Seller
Operating Reserves	Seller	Seller	Seller
Synchronous Condensing			Seller
Capacity Credit Market			Seller
Reconciliation for Spot Market			Seller
Reconciliation for Regulation			Seller
Reconciliation for Operating Reserves			Seller
Emergency Energy			Seller
FTR Auction			Seller
Meter Error Correction			Seller
PJM Economic & Emergency Load Response Programs			Seller
Credits:			
Spot Market Energy	Seller	Seller	Seller
Transmission Congestion			
Hourly			Seller
Annual			Seller
Transmission Losses (Point-to-Point)			Buyer
Regulation			Seller
Spinning Reserve			Seller
Operating Reserves	Seller	Seller	Seller
Synchronous Condensing			Seller
Capacity Credit Market			Seller
Reconciliation for Transmission Losses			Buyer
Emergency Energy			Seller
Auction Revenue Rights			Seller

FINAL BILLING STATEMENT ISSUED ON: MM/DD/YYYY
FOR PERIOD: MM/DD/YYYY TO MM/DD/YYYY

PJM OPEN ACCESS TRANSMISSION TARIFF:

	Total
Charges:	
PJM Scheduling, System Control and Dispatch Service	Buyer
Transmission Owner Scheduling, System Control and Dispatch Service	Buyer
Reactive Supply and Voltage Control from Generation Sources Service	Buyer
Black Start Service	Buyer
Network Integration Transmission Service	Buyer
Network Transmission Service Offset Charges	Buyer
Firm Point-to-Point Transmission Service	Seller
Non-Firm Point-to-Point Transmission Service	Seller
Mid-Atlantic Area Council (MAAC)	Buyer
Transitional Market Expansion Charges (Transmission Customer Charge Only)	Buyer
Reconciliation for PJM Scheduling, System Control and Dispatch Service	Buyer
Reconciliation for Transmission Owner Scheduling, System Control and Dispatch Service	Buyer
Scams Elimination Charges	Buyer
Credits:	
Non-Firm Point-to-Point Transmission Service	Buyer
Other Supporting Facilities	Buyer
Scams Elimination Credits	Buyer
Energy Imbalance Credits	Seller

Reliability Assurance Agreement Among Load Serving Entities in the PJM Control Area:

	Total
Charges:	
Capacity Deficiency	Seller
Credits:	
Capacity Excess	Seller