



AEP Order Number: 03-FO-24-001

Date: 5/16/2024

Seller Marathon Petroleum Company LP
Address: 539 S. Main Street
Findlay, OH 45840-3229
Attn: Lauren Hare
Phone: 419-348-8649
Email: lhare@marathonpetroleum.com

Buyer Wheeling Power Company
Address: 1 Riverside Plaza, 14th Floor
Columbus, OH 43215
Attn: Grant D. Circle
Phone: 614-216-9195
Email: gdcircle@aep.com

Goods: 15 ppm dyed heating oil with 0-5% biodiesel

All product delivered under this Purchase Order ("Order") shall not be used in highway vehicles or engines or nonroad, locomotive, or marine engines. Any variation in product delivered will be mutually agreed upon by Buyer and Seller prior to shipment.

Acknowledgment of Intended Use: Buyer agrees that the fuel purchased under this Order will be used exclusively in furnaces, boilers, combustion turbines and similar applications for the generation of electricity and is not intended for use in highway vehicles or engines, or nonroad, locomotive or marine engines..

Destination: Mitchell Plant (State Route 2, New Moundsville, WV)

Term: This Order shall commence on September 1, 2024 and end on August 31, 2026 ("Term").

Quantity: Each tanker truck delivery shall be 7,500 gallons plus or minus a reasonable quantity for variations in truck loading. While Seller shall be obligated to supply as much of the Goods as Buyer shall require at the Plant and Buyer shall be obligated to purchase the Goods for the Plant exclusively from Seller during the Term, there shall be no minimum or maximum established.

Order Price: The Order Price shall be the published OPIS price per gallon for the OPIS Rack City shown hereunder as published by OPIS on the date of delivery (the "Selling Price", with the date of delivery being the "Selling Price Date"), as adjusted for any Transportation and Freight Adder, Charges, applicable taxes, and applicable discounts. If the Selling Price Date falls on a non-business day, then the Parties agree to use the OPIS price for the most recent prior business day, and such business day shall then be the Selling Price Date. The OPIS price to be used will be the "CONT UBD AVG", which stands for Contract Unbranded Average that corresponds to the appropriate Rack City and product delivered. The date for this data should match the Selling Price Date. When the OPIS Contracted Unbranded Average price is not published on a Selling Price Date, the Selling Price will be determined by using the OPIS Contracted Branded Average price for such Date. The branded average will only be used when the unbranded average is not published.



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Plant:	Mitchell
OPIS Rack City:	Marietta, OH
Product Basis	#2 Red Dye ULSD OPIS Contract Unbranded Average minus \$0.0725
Transportation and Freight Adder:	\$0.07
Pump Charge:	\$0.00
Demurrage Charge:	\$0.00

Invoicing and Taxes: Buyer and Seller agree that the following taxes shall apply to deliveries under this Order to the extent, and only to the extent, that the taxes are not already included in the OPIS price: sales and use taxes, the Federal Oil Spill Liability Tax and the Federal Leaking Underground Storage Tank Tax.

Seller's invoice shall reflect the Order Price, based upon the components as enumerated below:

- 1) The product description and gross delivered weight in gallons
- 2) The Selling Price, as adjusted for any applicable discounts/adders
- 3) freight charges, including without limitation, Transportation and Freight Adder
- 4) Taxes as individual line item charges, as applicable, such as:
 - a) Sales and use taxes
 - b) Federal Oil Spill Liability Tax (the "Environmental Fee")
 - c) Federal Leaking Underground Storage Tank Tax or L.U.S.T. Tax
- 5) Pump Charge, if applicable
- 6) Demurrage Charge, if applicable

With regard to federal and state excise taxes and environmental taxes and fees not named herein, Seller will use commercially reasonable efforts to inform Buyer in writing, no less than thirty (30) days in advance, of the relevant legislation enacting such new federal and state excise taxes and environmental taxes and fees (hereafter "New Taxes and/or Fees"). Unless Buyer disputes Seller's advice within thirty (30) days after receipt of Seller's written notification, then thereafter such other New Taxes and/or Fees shall be reflected in Seller's invoicing as individual line item charges. Should Buyer dispute the applicability of any such New Taxes and/or Fees, then the parties shall meet to discuss a resolution to the disputed New Taxes and/or Fees.



Buyer shall have no obligation to pay any interest or penalties on any taxes to the extent such interest or penalties arise from Seller's lack of diligence or intentional conduct.

Seller shall send its invoices by e-mail to: cantonfuelaccounting@aep.com

Buyer shall promptly provide Seller with Buyer's direct pay permit or exemption certification where applicable.

**Delivery
Instructions:**

By tanker truck in accordance with instructions provided by Buyer.

**Notice
Addresses:**

For Seller:

Attn: National Accounts Manager
Marathon Petroleum Company LP
539 S. Main Street
Findlay, OH 45840-3229

For Buyer:

Attn: Natural Gas & Fuel Oil Procurement
American Electric Power Service Corporation
1 Riverside Plaza – 14th Floor
Columbus, OH 43215



Terms and
Conditions:

The AEP Fuel Oil Order Terms and Conditions dated December 9, 2014, as amended below, are attached hereto and made a part of this Order, and by signing below the parties agree to be bound.

Amendments to
Terms and
Conditions:

Section 1, **Definitions**, is deleted and the following is substituted in lieu thereof:

1. **Definitions.** "Goods" means all goods, including documentation and services provided by Seller under the Order. "Buyer" and "Seller" mean the entities identified on the Order. Buyer and Seller may be referred to each individually as "Party" or collectively as "Parties".

Section 2, **Priority**, first sentence, is deleted and the following is inserted in lieu thereof:

The Order consists of the following documents, listed in their order of priority in the event of a conflict: the numbered Order; including any exhibits and schedules incorporated into the Order, and these AEP Fuel Oil Order Terms and Conditions.

Section 3, **Payment**, sixth sentence is deleted, and the following is inserted in lieu thereof:

The Order Price shall include all taxes.

Section 4, **Shipment and Delivery**, is deleted, and the following is inserted in lieu thereof:

4. **Shipment and Delivery.** Seller must comply with any packing, shipping, and weighing instructions issued by Buyer. Seller is responsible for loss or damage to the Goods caused by improper delivery. Subject to Section 16, Seller is responsible for additional costs caused by Seller's failure to comply with shipping instructions. Seller must give Buyer immediate notice of its anticipated failure to meet the shipment or delivery schedule. If Goods are not delivered in accordance with the delivery schedule, or in the event of any other failure to perform this Order by Seller not arising from force majeure or fault of Buyer, Buyer may, at its option: (a) cancel the Order; (b) return the Goods to Seller at Seller's expense; (c) keep the Goods and pay for them in accordance with this Order; or (d) purchase similar goods in the open market, in which case Seller must pay Buyer the amount equal to the positive difference, if any, obtained by subtracting the Order Price from the Replacement Price, plus any additional delivery and transportation costs incurred by Buyer due to Seller's failure to perform. Except for the indemnification responsibility of the Parties, SUBPARTS 4(a)-(d) REPRESENT BUYER'S SOLE REMEDIES FOR SELLER'S FAILURE TO PERFORM THIS ORDER. "Replacement Price" means the price, determined by Buyer in a commercially reasonable manner, at which Buyer purchases (if at all) substitute Goods for the deficiency or, absent such a purchase, the market price for such quantity of Goods at the consigned destination. Buyer reserves the right to have all or any part of the Goods re-consigned for delivery to alternative destinations and shall be responsible for any additional delivery and transportation costs incurred as a result of such re-consignment. If necessary for Buyer's exercise of these rights, Buyer shall notify Seller and provide alternative shipping and invoicing instructions.

Each Party hereby stipulates that the payment obligations set forth above are reasonable in light of the anticipated harm and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.

Section 5, **Force Majeure**, last sentence, is amended as follows:



If Seller claims force majeure under this Order and has obligations to provide goods of a similar type and quality under other Goods sales agreements, or Buyer claims force majeure under this Order and has obligations to purchase goods of a similar type and quality under other Goods sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated by the party claiming force majeure on a pro rata basis among the Order and such other goods sales agreements.

Section 6, **Title and Risk of Loss**, is deleted, and the following is inserted in lieu thereof:

6. Title and Risk of Loss. Title to and risk of loss of the Goods shall pass to Buyer as the Goods pass the transport truck flange of Seller's equipment for transfer to Buyer's tank. Title to the Goods shall be free and clear of all liens and encumbrances.

Section 8, **Warranty**, is deleted, and the following is inserted in lieu thereof:

8. Warranty. Seller warrants that the Goods delivered pursuant to the Order shall meet applicable ASTM specifications, as well as federal, state and local rules and regulations in effect at the time and place title thereto passes to Buyer, and that it has good title to Goods, free of all liens. **THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller will, at Buyer's option and at Seller's cost (including expense of return and re-delivery), remedy the defect in, replace, or refund the purchase price of, any Goods that fail to meet this warranty. **THIS IS BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.**

Section 10, **Compliance with Laws**, is deleted, and the following is inserted in lieu thereof:

10. Compliance with Laws. Each party shall comply with all applicable laws, rules, regulations and orders of any governmental authority, and will obtain at its expense all permits and licenses, pertaining to its respective performance under this Order. Seller shall comply with all applicable project and site rules of Buyer.

Section 11, **Safety**, is deleted, and the following is inserted in lieu thereof:

11. Safety. Seller and its representatives shall comply with all of Buyer's safety rules and procedures. Seller shall perform its work in a safe and careful manner and use such safety devices and methods as are necessary to protect its employees, agents, subcontractors Buyer's employees and agents and the public from harm and damage. In connection with the Goods, Seller shall ensure that Seller's employees, subcontractors and agents present on Buyer's premises, are drug free. Buyer shall thoroughly review and adhere to all Safety Data Sheets (SDS) and other safety-related information provided by Seller concerning the Goods. Buyer acknowledges the hazards and assumes the risks associated with handling and using the Goods. SDS for the Goods are available at the following internet address: <http://www.marathonpetroleum.com/brand/products/sds/>. Buyer may request to receive SDS via email by contacting the Seller at sdsinfo@marathonpetroleum.com.

Section 14, **Termination**, is deleted, and the following is inserted in lieu thereof:

14. Termination. Buyer shall be entitled to terminate the Order without notice for cause under the following circumstances: (a) Seller's refusal or failure to perform Seller's



responsibilities in a competent or satisfactory manner; (b) Seller's engagement in activities or conduct injurious to the best interest or reputation of the Buyer; (c) Seller's violation of any of the material terms and conditions of the Order, or (d) Seller's unauthorized disclosure, dissemination, or misappropriation of confidential, proprietary, and/or trade secret information. Seller shall be entitled to terminate the Order on Buyer's failure to timely pay any amount due under the Order and such non-payment is uncured for 10 days after Buyer's receipt of such notice of termination. Upon termination for cause, a party may pursue all rights and remedies available under the law.

Section 15, **Indemnification**, is deleted, and the following is inserted in lieu thereof:

15. Indemnification. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, EACH PARTY (the "INDEMNITOR") WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AND ITS EMPLOYEES AND AGENTS ("INDEMNITEES") AGAINST ANY LOSS, CLAIM, LIABILITY, EXPENSE (INCLUDING COURT COSTS, ATTORNEY FEES, AND LITIGATION EXPENSES) OR PENALTY OF ANY KIND (COLLECTIVELY, A "LIABILITY"), ARISING OUT OF, OR RELATING TO (A) INJURIES OR DEATH TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY INDEMNITOR'S NEGLIGENCE OR INTENTIONAL MISCONDUCT IN THE HANDLING, PROCESSING, TRANSPORTATION, USE OR SELECTION OF ANY GOODS, OR ANY OTHER OBLIGATIONS HEREUNDER OR (B) ANY ACT OF INDEMNITOR NOT IN COMPLIANCE WITH, OR A FAILURE TO ACT IN COMPLIANCE WITH, THE TERMS AND CONDITIONS OF THIS ORDER. WITH RESPECT TO CLAIMS AGAINST INDEMNITEE BY INDEMNITOR'S EMPLOYEES, INDEMNITOR AGREES TO EXPRESSLY WAIVE ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER THE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74. Indemnitor shall pay Indemnitee's reasonable attorneys' fees and litigation costs associated with enforcement of this Section 15 obligation.

Section 16, **Limitation of Liability**, is deleted and the following is inserted in lieu thereof:

16. Limitation of Liability. Except as expressly provided herein, neither Party shall be liable to the other for any incidental, indirect, special, punitive or consequential damages. Each party must bring any cause of action arising under this Order against the other party within one year from the time the cause of action accrues; provided, however quality or quantity claims regarding the Goods must be delivered to Seller in writing within 30 days after Buyer's receipt of the Goods. The affiliated companies of the American Electric Power System are severally and not jointly liable for obligations arising hereunder, except to the extent such affiliated company otherwise expressly agreed in writing by an officer of such affiliated company to undertake such liability.

Section 17, **Assignment**, is deleted, and the following is inserted in lieu thereof:

17. Assignment. Neither Party may subcontract, assign, or otherwise dispose of the Order without the prior written consent of the other Party, provided, however, either party may assign the Order to an affiliate without consent on 7 days' prior written notice to the other party. Any attempted assignment or delegation contrary to this Section 17 will be void. In the event of a sale or transfer of all or substantially all of Buyer's equity shares or assets, or a controlling interest in either, by merger, acquisition, exchange, joint venture, or other



similar transaction, Seller will have the right, at its sole option, to terminate this Order upon 30 days written notice to Buyer.

Section 19, **Financial Responsibility**, is deleted in its entirety.

Section 20, **Forward Contract**, is deleted in its entirety.

Section 24, **Export Sales**, is added, as follows:

24. Export Sales. Buyer will ensure none of the Goods supplied under this Order is exported from the U.S.A. Buyer shall indemnify and hold Seller harmless from all fines, penalties, costs, and expenses (including reasonable attorney fees) incurred by reason of the breach of the foregoing.

Section 25, **Trademarks**, is added, as follows:

25. Trademarks. Buyer will not use Seller's name, trade or service marks, or trade dress in any way with regard to the Goods.

Accepted:

Seller:

Marathon Petroleum Company LP
By: MPC Investment LLC, its General Partner

Julie Cordonnier

Julie Cordonnier (Jul 1, 2024 13:41 EDT)

Signature

Julie Cordonnier

Name

National Accounts Director

Title

Jul 1, 2024

Date

Buyer:

Wheeling Power Company

DocuSigned by:

Joel H. Jansen

BD4FA5DF439F4BB...

Signature

Joel Jansen

Name

Vice President

Wheeling Power Company

Title

7/3/2024 | 2:25 PM EDT

Date



JB
JB

LH
LH

RM
RM

Approved As To Form



AEP FUEL OIL ORDER TERMS AND CONDITIONS – 12/09/14

1. Definitions. "Goods" means all conforming goods, including documentation and services provided by Seller under the Order. "Buyer" and "Seller" mean the entities identified on the Order. Buyer and Seller may be referred to each individually as "Party" or collectively as "Parties".

2. Priority. The Order consists of the following documents, listed in their order of priority in the event of a conflict: the numbered Order; these AEP Fuel Oil Order Terms and Conditions and any exhibits or schedules incorporated into the Order. Acceptance of the Order is expressly limited to the terms of the Order. Additional or different terms contained in Seller's acceptance shall not become a part of the Order unless expressly agreed to in writing and signed by Buyer.

3. Payment. Seller shall invoice Buyer for the Order Price after delivery of the Goods to Buyer. Buyer shall remit to Seller, upon submission of a proper invoice, payment for Goods delivered and accepted. Buyer may withhold all or part of payment if Buyer disputes Seller's compliance with the terms of the Order. Buyer's payment of this Order is not acceptance of the Goods. The Order number must appear on all invoices, notices and packing materials. Seller's price shall include all taxes, except sales and use taxes. Buyer shall provide Seller with Buyer's direct pay permit or exemption certificate where applicable. Seller shall invoice for all Goods accepted hereunder by Buyer within 30 days of Buyer's receipt. Buyer shall issue payment net 10 days following receipt of Seller's proper invoice. Overdue payments shall accrue interest which shall be calculated as the annual prime rate of interest for U.S. Dollars as published from time to time during such period by the Wall Street Journal, but not to exceed the maximum applicable lawful interest rate from the due date until paid. If not already provided in the Order, Seller shall provide Buyer all pertinent remittance instructions in a letter (containing the bank name, account name, financial institution routing and transit number, and account number, as well as Seller's federal tax identification number) which shall be signed by a duly authorized representative of Seller. Any change in the remittance instructions shall be provided by Seller in the same manner.

4. Shipment and Delivery. Seller must comply with any packing, shipping, and weighing instructions issued by Buyer. Seller is responsible for loss or damage to the Goods caused by improper delivery. Seller is responsible for additional costs caused by Seller's failure to comply with shipping instructions. Seller must give Buyer immediate notice of its anticipated failure to meet the shipment or delivery schedule. If Goods are not shipped or delivered in accordance with the delivery schedule, or in the event of any other failure to perform this Order by Seller, Buyer may, at its option, in whole or in part: (a) cancel the Order; (b) return the Goods to Seller at Seller's expense; (c) keep the Goods; and (d) purchase similar goods in the open market, in which case Seller must pay Buyer the amount equal to the positive difference, if any, obtained by subtracting the Order Price from the Replacement Price, plus any additional delivery and transportation costs incurred by Buyer due to Seller's failure to perform. Except for the indemnification responsibility of the Parties, SUBPARTS 4(a)-(d) REPRESENT BUYER'S SOLE REMEDIES FOR SELLER'S FAILURE TO PERFORM THIS ORDER. "Replacement Price" means the price, determined by Buyer in a commercially reasonable manner, at which Buyer purchases (if at all) substitute Goods for the deficiency or, absent such a purchase, the market price for such quantity of Goods at the consigned destination. Buyer's retention of Goods is not acceptance of the Goods. In the event that any cancellation by Buyer is determined to be without proper cause, Seller's damages shall be limited to the damages payable under Section 14. Buyer reserves the right to have all or any part of the Goods re-consigned for delivery to alternative destinations and shall be responsible for any additional delivery and transportation costs incurred as a result of such re-consignment. If necessary for Buyer's exercise of these rights, Buyer shall notify Seller and provide alternative shipping and invoicing instructions.

Each Party hereby stipulates that the payment obligations set forth above are reasonable in light of the anticipated harm and each Party hereby waives the right to contest such payments as an unreasonable penalty or otherwise.



5. Force Majeure. Neither Party shall be in breach of the Order to the extent that any delay or default in performance is due to causes beyond the reasonable control of the delayed or defaulting Party. A Party affected by force majeure shall advise the other promptly of any force majeure conditions, describing the force majeure conditions, its effect on deliveries and expected duration. Whether any deficiencies in shipments caused by the force majeure event are made up as well as the scheduling of such, shall be at Buyer's sole discretion. If Seller claims force majeure under this Order and has obligations to provide goods of a similar type and quality under other Goods sales agreements, then any reductions in Seller's deliveries or Buyer's purchases (as applicable) shall be allocated to the party claiming force majeure on a pro rata basis among the Order and such other goods sales agreements.

6. Title and Risk of Loss. Title to and risk of loss of the Goods shall pass to Buyer as the Goods pass (as applicable) the transport truck flange of from Seller's equipment for transfer to Buyer's tank. Title to the Goods shall be free and clear of all liens and encumbrances.

7. Inspection and Acceptance. Upon delivery of the Goods to Buyer's site, Buyer shall promptly inspect the Goods for conformance to the Order. Buyer's inspection or acceptance of the Goods shall not relieve Seller of its obligation to comply with the terms of the Order. Quality or quantity claims must be delivered to Seller in writing within 30 days after delivery of the Goods, and all other claims must be delivered within 60 days after the event giving rise to the claim. Buyer shall preserve, and permit Seller to inspect and sample, the subject Goods if claimed by Buyer to be non-conforming. Buyer may reject non-conforming Goods at any time at Seller's expense.

8. Warranty. Seller warrants that the Goods delivered pursuant to the Order shall meet applicable Seller, Buyer, or ASTM specifications, and that it has good title to Goods, free of all liens. **THIS WARRANTY IS IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Seller will, at Buyer's option and at Seller's cost (including expense of return and re-delivery), remedy the defect in, replace, or refund the purchase price of, any Goods that fail to meet this warranty. **THIS IS BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY.**

9. On-Site Activities. At any time while Seller is on Buyer's site, Seller shall (a) comply with the workers' compensation and occupational disease law of the state where the services are performed; (b) maintain commercial general liability insurance with limits of not less than \$5,000,000 each occurrence and aggregate; (c) maintain commercial general automobile liability insurance with limits for bodily injury and property damage of not less than \$5,000,000 each accident; provided, however, that Seller may, as permitted by law, self-insure during performance of this Order to meet the requirements of this Section and shall, upon Buyer's written request, provide documentation of its self-insured status prior to entering Buyer's site. Policies written on a claims-made basis shall be maintained for five years after performance of the Order is completed. Prior to entering Buyer's site, Seller shall provide Buyer with an acceptable certificate of insurance waiving subrogation against Buyer. The certificate of insurance must state that the insurance carrier has issued the insurance specified, that such policies are in force and that Seller will give Buyer 30 days' prior written notice of any material change in, or cancellation of, such policies. The insurance required by this section shall include contractual liability insurance covering the obligations under this Order.

10. Compliance with Laws. Seller and its representatives shall comply with all applicable laws, rules, regulations and orders of any governmental authority, and will obtain at its expense all permits and licenses, pertaining to its obligations under this Order. Unless exempted, Seller shall comply with the equal employment opportunity clause in Section 202 of Executive Order 11246 and all applicable rules, regulations, and relevant orders pertaining to Executive Order 11246, Section 503 of the Rehabilitation Act of 1973, and Section 4212 of the Vietnam Era Readjustment Assistance Act of 1974, as amended. Seller shall comply with all applicable project and site rules. Seller agrees to indemnify and save Buyer harmless from and against any liability or damages, including attorneys' fees, for non-compliance by Seller.



11. Safety. Seller and its representatives shall comply with all of Buyer's safety rules and procedures. Seller shall perform its work in a safe and careful manner and use such safety devices and methods as are necessary to protect its employees, agents, subcontractors, Buyer's employees and agents and the public from harm and damage. In connection with the Goods, Seller shall ensure that Seller's employees, subcontractors and agents are drug free.

12. Infringement. Seller warrants that the purchase or use of the Goods by Buyer will not infringe upon or violate any trademarks, patents, copyrights, trade secrets or other third party property rights. Seller agrees to indemnify and save Buyer harmless from and against any liability or damages, including attorneys' fees, arising out of any alleged infringement or violation.

13. Confidentiality. The Parties and their respective affiliates shall keep confidential any and all matters relating to the Order, except those readily obtainable from public information, required by a regulatory commission, or otherwise required by law to be disclosed.

14. Termination. Buyer may, for its convenience, terminate all or any part of the Order upon 30 days written notice to Seller. Upon termination, Seller shall immediately stop work on the terminated portion of the Order and shall submit to Buyer an invoice with supporting information setting forth the Order Price for the Goods delivered prior to the notice of termination, plus Seller's actual, direct unavoidable costs resulting from the termination, less salvage value. Buyer shall not be liable to Seller for Seller's lost profits on the terminated part of the Order.

Upon termination for cause, Buyer shall not be liable to Seller for Seller's lost profits on the termination portion of the Order. Buyer shall be entitled to terminate the Order without notice for cause under the following circumstances: (a) Seller's refusal or failure to perform Seller's responsibilities in a competent or satisfactory manner; (b) Seller's engagement in activities or conduct injurious to the best interest or reputation of the Buyer; (c) Seller's violation of any of the material terms and conditions of the Order, or (d) Seller's unauthorized disclosure, dissemination, or misappropriation of confidential, proprietary, and/or trade secret information. Upon termination for cause, Buyer may pursue all rights and remedies available under the law.

15. Indemnification. TO THE EXTENT PERMITTED BY LAW, EACH PARTY (the "INDEMNITOR") WILL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY AND ITS EMPLOYEES AND AGENTS ("INDEMNITEES") AGAINST ANY LOSS, CLAIM, LIABILITY, EXPENSE (INCLUDING COURT COSTS, ATTORNEY FEES, AND LITIGATION EXPENSES) OR PENALTY OF ANY KIND (COLLECTIVELY, A "LIABILITY"), ARISING OUT OF, OR RELATING TO INJURIES, DISEASE, OR DEATH TO PERSONS OR DAMAGE TO PROPERTY CAUSED BY INDEMNITOR'S NEGLIGENCE OR INTENTIONAL MISCONDUCT IN THE HANDLING, PROCESSING, TRANSPORTATION OR SELECTION OF ANY GOODS, OR ANY OTHER OBLIGATIONS HEREUNDER. WITH RESPECT TO CLAIMS AGAINST INDEMNITEE BY INDEMNITOR'S EMPLOYEES, INDEMNITOR AGREES TO EXPRESSLY WAIVE ITS IMMUNITY AS A COMPLYING EMPLOYER UNDER THE WORKERS' COMPENSATION LAW, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION. With respect to the State of Ohio, this waiver applies to Section 35, Article II of the Ohio Constitution and Ohio Rev. Code Section 4123.74. Indemnitor shall pay Indemnitee's reasonable attorneys' fees and litigation costs associated with enforcement of this Section 15 obligation.

16. Limitation of Liability. Except as expressly provided herein, neither Party shall be liable to the other for any incidental, indirect, special, punitive or con-sequential damages. Seller must bring any cause of action arising under this Order within one year from the time the cause of action accrues. The affiliated companies of the American Electric Power System are severally and not jointly liable for obligations arising hereunder.

17. Assignment. Neither Party may subcontract, assign, or otherwise dispose of the Order without the prior written consent of the other Party. However, Buyer may assign the Order to an affiliate without consent.



18. Governing Law; Waiver of Jury Trial; UCC; Venue. This Order shall be construed, enforced, and performed in accordance with the laws of the State of Ohio, without regard to its conflict of laws provisions and excluding the United Nations Convention on Contracts for the International Sales of Goods. Each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Order. Except as otherwise provided for herein, the provisions of the Uniform Commercial Code (“UCC”) of the State of Ohio shall govern this Order and Goods provided hereunder shall be deemed to be “goods” for purposes of the UCC. Each Party hereby submits to the exclusive jurisdiction of state, federal, and appellate courts located in Franklin County, Ohio and waives any objection which it may have at any time to the proceedings being brought in such court, waives any claims that such proceedings have been brought in an inconvenient forum, and further waives the right to object, with respect to such proceedings, that such court does not have jurisdiction over such party.

19. Financial Responsibility. Seller shall have and maintain, during the Term of the Order, creditworthiness acceptable to Buyer. Specific financial requirements, if any, will be enumerated in the Order. Buyer shall have the right, but not the obligation, to request from Seller or Seller’s guarantor, as applicable, audited annual financial statements and quarterly unaudited financial statements. Should the creditworthiness or financial responsibility of Seller become unsatisfactory to Buyer, in its reasonable judgment, at any time during which this Order is in effect, satisfactory Performance Assurance may be required before further deliveries/receipts are made under this Order.

“Performance Assurance” means collateral in the form of either cash or Letters of Credit or other such security of the type and amount requested by the party demanding Performance Assurance.

“Letters of Credit” means one or more irrevocable, transferable, standby letter of credit, issued by a major United States commercial bank or the United States branch office of a foreign bank, reasonably acceptable to the beneficiary with, in either case, a senior unsecured credit rating of at least (a) “A-” by Standard & Poor’s Ratings Services, a division of The McGraw-Hill Companies, Inc. (“S&P”), and “A-3” by Moody’s Investors Service, Inc. (“Moody’s”), if such entity is rated by both S&P and Moody’s, or (b) “A-” by S&P or “A3” by Moody’s, if such entity is rated by either S&P or Moody’s, but not both.

20. Forward Contract. Buyer and Seller each acknowledge that it is a “forward contract merchant” and that this Order constitutes a “forward contract” within the means of the United States Bankruptcy Code.

21. Netting and Set-off. If Buyer and Seller are required to pay any amount on the same day or in the same month, then such amounts with respect to each Party may be aggregated and the Parties may discharge their obligations to pay through netting, in which case the Party, if any, owing the greater aggregate amount shall pay to the other Party owed the difference between the amounts owed. Each Party reserves to itself all rights, setoffs, counterclaims, combination of accounts, liens and other remedies and defenses which such Party has or may be entitled to (whether by operation of law or otherwise). The obligations to make payments under this Order and any other contract between the Parties hereto may be offset or recouped against each other.

22. Notices. Each Party shall designate in writing a representative to receive any and all notices required under this Order. Notices shall be in writing and shall be given to the representative designated to receive them, either by personal delivery, certified mail, facsimile, e-mail or any similar means, properly addressed to such representative. All notices shall be effective upon receipt, or upon such later date following receipt as set forth in the notice. Either Party may, by written notice to the other, change the representative or the address to which such notices are to be sent.

23. Miscellaneous. Seller shall be an independent contractor of Buyer in the performance of this Order. No waiver by either Party of any default shall be deemed a waiver of any subsequent default. If any provision of this Order is held to be invalid, such invalidity shall not affect the remaining provisions of this Order. The Order constitutes the entire agreement between the Parties and supersedes any prior understanding or representations, and except as otherwise provided herein, shall not be modified unless in writing and signed by both Parties.