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RECEIVED  
JUL 29 2010  
PUBLIC SERVICE  
COMMISSION

**VIA OVERNIGHT DELIVERY**

July 29, 2010

Mr. Jeff Derouen  
Executive Director  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40601

Re: Case No. 2010-00146

Dear Mr. Derouen:

Enclosed please find for filing an original and twelve copies each of the *Responses of Duke Energy Kentucky, Inc. to Commission Staff's First Data Requests*, *Responses of Duke Energy Kentucky, Inc. to RESA First Data Requests*, *Responses of Duke Energy Kentucky, Inc. to Stand Energy First Data Requests* and *Responses of Duke Energy Kentucky, Inc. to Vectren Source/Interstate Gas Supply, Inc./Southstar Energy Services' First Data Requests*.

Please date-stamp the extra two copies of the filing and return to me in the enclosed envelope.

Sincerely,

Dianne B. Kuhnell  
Senior Paralegal

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PUBLIC SERVICE COMMISSION

VERIFICATION

State of Ohio )  
 )  
County of Hamilton ) SS:

The undersigned, B. Mitchell Martin, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Manager of City Gate Operations within the Gas Operations Department of Duke Energy Business Services, LLC; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.

B. Mitchell Martin  
B. Mitchell Martin, Affiant

Subscribed and sworn to before me by B. Mitchell Martin on this 27<sup>th</sup> day of July 2010.

Julie M. Thompson  
NOTARY PUBLIC

My Commission Expires: 11-19-10



JULIE M. THOMPSON  
Notary Public, State of Ohio  
My Commission Expires 11-19-10



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**STAFF-DR-01-001**

**REQUEST:**

Refer to the Direct Testimony of B. Mitchell Martin (“Martin Testimony”), pages 5 and 6. Provide the details of the retail choice programs of Duke Energy Ohio (“Duke Ohio”). To the extent possible, compare the Duke Ohio programs to Columbia Gas of Kentucky’s retail choice program.

- a. Have any small-volume customers contacted Duke Kentucky within the past five years expressing interest in having a choice in gas supplier? If yes, how many and over what period of time?

**RESPONSE:**

Attached is Duke Energy Ohio’s Rate FRAS (Full Requirements Aggregation Service) tariff, which sets out the detailed provisions of the Company’s firm aggregation/pooling program in support of retail customer choice in Ohio. This pooling service allows suppliers to deliver to the Company on an aggregated basis those natural gas supplies that are needed to satisfy the requirements of customer pools participating in the Company’s retail choice program.

Duke Energy Kentucky does not have a sufficient level of expertise on Columbia Gas of Kentucky’s retail choice program needed to perform a comparison to Duke Energy Ohio’s program.

- a. No call logs are formally kept to capture this type of customer inquiry.

**PERSON RESPONSIBLE:** B. Mitchell Martin

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## **RATE FRAS**

### **FULL REQUIREMENTS AGGREGATION SERVICE**

#### **APPLICABILITY**

This service is available to Suppliers delivering gas on a firm basis to the Company's city gate receipt points on behalf of Customers receiving firm transportation service from the Company under Rate Schedules RFT and FT. The service provided hereunder allows Suppliers to deliver to the Company on an aggregated basis those natural gas supplies that are needed to satisfy the requirements of Customer Pools participating in the Company's firm transportation programs.

#### **CHARACTER OF SERVICE**

This Tariff Sheet applies to the provision of pooling service for firm gas transportation Customers. Suppliers under this Tariff Sheet shall supply the full requirements of their Pool Customers and agree to accept supply management responsibility. Company shall specify and Supplier shall deliver each day the Target Supply Quantity for Supplier's Pool.

#### **GAS SUPPLY AGGREGATION/CUSTOMER POOLING AGREEMENT**

Prior to acting as a Supplier for Pool Customers taking service under Rate Schedules RFT or FT, Supplier must enter into a Gas Supply Aggregation/Customer Pooling Agreement with the Company. An example of the Gas Supply Aggregation/Customer Pooling Agreement is attached to this Tariff Sheet.

#### **SUPPLIER INVOICE**

On a monthly basis, the Company will generate, and Supplier will pay, an invoice that includes the costs set forth below in this Tariff Sheet and in Sheet No. 45 herein.

#### **LATE PAYMENT CHARGE**

Payment of the total amount due must be received by Company, or an authorized agent, by the due date shown on the Supplier's invoice. If the Supplier does not pay the total amount due by the date shown, an additional amount equal to one and one half percent (1.5%) of the total unpaid balance shall also become due and payable.

#### **RETURNED CHECK CHARGE**

The Returned Check Charge set forth in Sheet No. 45 herein shall be added to the Supplier's account each time a check is returned by the financial institution for insufficient funds.

#### **MEASUREMENT OF CUSTOMER USAGE VOLUMES**

The Company shall be responsible for all usage measurement at the point of delivery to the Customer's facilities. Monthly volumes billed to Pool Customers shall be considered actual volumes consumed, whether the meter reading is actual or estimated.

#### **QUALITY OF GAS DELIVERED BY SUPPLIER**

The Supplier warrants that all gas delivered by or on behalf of Supplier for its Pool Customers under this Tariff Sheet shall meet the quality, pressure, heating value and other quality specifications of the applicable FERC Gas Tariff of the interstate gas pipeline delivering said gas to the Company.

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#### **TITLE AND WARRANTY**

Supplier warrants that it will, at the time and place of delivery, have good right and title to all volumes of gas delivered on its behalf, free and clear of all liens, encumbrances, and claims whatsoever, and that it will indemnify and hold the Company harmless for all suits, actions, debts, accounts, damages, costs, losses, or expenses (including reasonable attorneys fees) arising from or out of the adverse claims of any or all persons relating to or arising from said gas.

#### **DEFINITIONS**

"Adjusted MDQ" means the Supplier's MDQ less the Company's winter propane percentage, representing the Pool's allocation of the Company's propane peaking supplies.

"Adjusted Target Supply Quantities" (ATSQ) means the Target Supply Quantities plus or minus any adjustments that the Company may require the Supplier to make to its daily deliveries (i.e., Annual Reconciliation volumes) plus the daily firm (Rate FT) requirements of all Customers being served by the Supplier under Rate IT.

"Aggregation Service" is a service provided by the Company that allows Suppliers to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the full firm requirements of the one, or more, firm transportation Customers that comprise the membership of the Supplier's Pool, as defined below, all in accordance with the rules established by the Company regarding delivery requirements, banking, billing and payments, and Supplier performance requirements.

"Arrearages" are past due and unpaid amounts owed to the Company. A 30-day arrears exists when any portion of the previous month's bill is unpaid at the time the current bill is issued. Customers having a 30-day or more arrears of \$50.00 or more are not eligible to participate in the Program. A customer who is current on a payment plan for previously billed and unpaid charges is not considered to have Arrearages when an electronic enrollment to the Company's firm transportation program is received from a Supplier.

"British Thermal Unit" or "Btu" means the quantity of heat required to raise one (1) pound of water (about a pint) one (1) degree Fahrenheit at or near its point of maximum density.

"Ccf" means one hundred cubic feet.

"Commission" means the Public Utilities Commission of Ohio.

"Company" means Duke Energy Ohio.

"Customer" means a residential, non-mercantile, or mercantile recipient of the Company's Sales Service or Transportation Service.

"Default" means the failure of the Company or Supplier to fulfill a duty or obligation set forth in Duke Energy Ohio's tariffs, the Ohio Revised Code, the Ohio Administrative Code, or any agreement or contract between and among the Company and Supplier.

"Dekatherm" or "Dth" means a unit of heating value equal to ten (10) Therms or Million Btu's (1 MMBtu).

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**DEFINITIONS (Contd.)**

"Eligible Customer" is a Customer that is eligible to participate in a Governmental Aggregation in accordance with section 4929.26 and 4929.27 of the Revised Code and does not include any of the following: a person that is both a distribution service Customer and a mercantile Customer on the date of commencement of service to the Governmental Aggregator or the person becomes a distribution service Customer after the service commencement date and is also a mercantile Customer; a person that is supplied with natural gas sales service pursuant to a contract with a Supplier that is in effect on the effective date of the ordinance or resolution authorizing the aggregation; a person that is supplied with natural gas sales service as part of the Percentage of Income Payment Plan program; or, a Customer that has failed to discharge, or enter into a plan to discharge, all existing Arrearages owed to or billed by the Company.

"Enrollment Processing Period" means the number of days required to process a Customer's accepted enrollment in the Program pursuant to this Tariff. This process commences with the submission to Company by Supplier of appropriate information for an eligible Customer and ends with the termination of the Customer's recession period. The process will take up to 12 calendar days, and includes 7 business days from the date the Company sends the Customer a letter indicating the Customer may rescind its Program enrollment or change in Suppliers.

"Gas Supply Aggregation/Customer Pooling Agreement" is an agreement between the Company and Supplier that defines the mutual responsibilities and obligations of those parties relative to the Aggregation Service provided under Rate FRAS.

"Maximum Daily Quantities" (MDQ) means the expected peak day natural gas usage for a Supplier's Pool of Customers.

"Mcf" means one thousand cubic feet.

"Mercantile Customer" has the meaning set out in division (L) of section 4929.01 of the Ohio Revised Code. In summary, it means a Customer that consumes, other than for residential use: 1) more than 5,000 Ccf of natural gas per year at a single location or as part of an undertaking having more than 3 locations within or outside the state, and 2) that has not filed a declaration with the PUCO.

"Negative Imbalance Volume" or "Under-deliveries" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

"OAC" means the Ohio Administrative Code.

"OCC" means the Ohio Office of Consumers' Counsel.

"Operational Flow Orders" (OFOs) are notices issued by the Company via its electronic bulletin board (EBB) or fax transmission requiring Suppliers to adjust their daily deliveries into the Company's system to match, match or be less than, or match or be more than their Adjusted Target Supply Quantity for the Supplier's Pool of Customers receiving service under Rates FT and RFT. Supplier shall be required to deliver natural gas, or to cause natural gas to be delivered,

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into the Company's specified city gate receipt points, if it is determined by the Company to be necessary and the specified receipt points and amounts are identified in the OFO notice posted on the EBB.

"Over-deliveries" or "Positive Imbalance Volume" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

"Pool" is a group of one or more Customers receiving service pursuant to firm transportation tariffs that have been joined together pursuant to Rate FRAS, Full Requirements Aggregation Service for supply management purposes. If PIPP Customers are being served by a Supplier, a separate Pool must be comprised entirely of PIPP Customers.

"Pool Customer" means a recipient of Transportation Service provided by the Company under Tariff Sheet Nos. 33 or 52 who receives gas supply from a Supplier as a member of a Pool.

"Pooling Program" refers to the services provided under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Firm Transportation Service (Rate FT – Sheet No. 52), and Full Requirements Aggregation Service (Rate FRAS – Sheet No. 44).

"Pooling Service" means a service provided by the Company that allows Suppliers to deliver to the Company gas supplies needed to satisfy the usage requirements of the Customers of the Supplier's Pool, all in accordance with the rules established by the Company in this Tariff Sheet and Gas Supply Aggregation/Customer Pooling Agreement.

"Positive Imbalance Volume" or "Over-deliveries" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.

"Program" means the Company's firm transportation/supply aggregation Customer choice program under Rate RFT and Rate FT, and Rate FRAS, respectively.

"PUCO" means the Public Utilities Commission of Ohio.

"Sales Service" means service under Residential Service (Rate RS – Sheet No. 30) or General Service (Rate GS – Sheet No. 32).

"Supplier" is a qualified business entity that: 1) has been certified by the PUCO to provide retail natural gas service, 2) has been chosen as a Supplier by a group of one or more Customers that qualifies as a Pool, 3) agrees to accept responsibility for the gas supply management of the Pool, 4) meets the Requirements for Supplier Participation set out in this Tariff Sheet, and 5) has executed a Gas Supply Aggregation/Customer Pooling Agreement with the Company.

"Supply Contract" or "Contract" means a contract between the Pool Customer and its Supplier that defines the mutual responsibilities and obligations of those parties relative to Customer's purchase and Supplier's sale of gas supplies for delivery to Customer pursuant to this Tariff Sheet and the applicable Transportation Service Tariff Sheet.

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"Target Supply Quantities" (TSQ) are defined as daily city gate delivery quantities determined from statistical models used to estimate the daily gas usage of the full requirements firm Customers in Supplier's Pool. These daily gas usage estimates are adjusted for Unaccounted-for Gas Loss and converted from volumetric to thermal quantities.

"Transportation Service" means service under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service - Large (Rate FT-L – Sheet No. 37), Firm Transportation Service – Small (Rate FT-S – Sheet No. 52) or Interruptible Transportation Service (Rate IT – Sheet No. 51).

"Unaccounted-for Gas Loss" is the difference between the Company's total available gas commodity and the total gas commodity accounted for (metered) as sales and transported volumes. The difference is comprised of factors including but not limited to leakage, discrepancies due to meter inaccuracies, Company use and with the use of cycle billing, an amount of gas used but not billed.

"Unaccounted-for Percentage" means a percentage calculated by dividing the difference between: 1) the aggregate volume of gas received into Company's system from the interstate pipelines plus the volume of vaporized propane, all converted to Mcf using the Btu content associated with such supply source and 2) the aggregate volume consumed by all of Company's gas Customers, stated in Mcf, over that same period, by the Mcf volume calculated in item 1) above.

"Under-deliveries" or "Negative Imbalance Volume" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

## REQUIREMENTS FOR SUPPLIER PARTICIPATION

Each Supplier desiring to receive Aggregation Service/Transportation Service from the Company will be evaluated to ensure that it possesses the financial resources and sufficient experience to perform its responsibilities as a Supplier. On the basis of this evaluation, a Supplier's participation may be limited to a level specified by the Company.

In order to assist Company in performing its evaluation, Supplier(s) must do the following:

- a) Provide proof of Commission Certification to the Company.
- b) Complete and sign Company's Credit Application form.
- c) Complete and sign Retail Natural Gas Supplier Registration form.
- d) Pay a registration fee as set forth in Sheet No. 45 herein.
- e) Attend Company-sponsored training for Retail Natural Gas Suppliers.
- f) Demonstrate a working understanding of the proper electronic communications capabilities necessary to transact business with the Company.
- g) Complete and sign the Company's Gas Supply Aggregation/Customer Pooling Agreement.

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#### **REQUIREMENTS FOR SUPPLIER PARTICIPATION (Contd.)**

Suppliers not meeting the necessary credit level will be required to provide additional security in a form and format specified by the Company.

Financial evaluations will be based on standard credit factors such as financial and credit ratings, trade references, bank information, unused line of credit, Pool Customer payment history, and related financial information that has been independently audited, if available. The Company shall determine credit worthiness based on the above criteria, and will not deny a Supplier's participation in the Program without reasonable cause. A fee will be assessed to the Supplier for each financial evaluation, as set forth in Sheet No. 45 herein.

The Company reserves the right to conduct re-evaluations of Supplier's financial standing from time to time. Such re-evaluation may be initiated either by a request from the Supplier or by the Company, if the Company reasonably believes that the creditworthiness or operating environment of a Supplier may have changed. Based on such re-evaluation, the Company may require the Supplier to increase the amount of its financial security. If the Supplier does not increase its security within five (5) business days of the Company's request or within an additional time period specified by the Company, the Supplier's participation may be suspended or terminated in accordance with the Consequences of Supplier's Failure to Perform or Comply section of this Tariff. The financial evaluation fee set forth in Sheet No. 45 herein will be assessed for such re-evaluations.

#### **GENERAL PROVISIONS**

- A) Suppliers and Governmental Aggregators shall not engage in unfair, misleading, deceptive, or unconscionable acts or practices related to, without limitation, the following activities:
  - 1) Marketing, solicitation, or sale of a competitive retail natural gas service;
  - 2) Administration of contracts for such service; or
  - 3) Provision of such service, including interactions with consumers.
- B) Suppliers shall maintain an employee and an office open for business in the state of Ohio.
- C) Suppliers and Governmental Aggregators shall not cause or arrange for the disconnection of distribution service, or employ the threat of such actions, as a consequence of contract termination, customer nonpayment, or for any other reason.
- D) Suppliers and Governmental Aggregators shall not change or authorize the changing of a Customer's Supplier of competitive retail natural service without the Customer's prior consent, as provided for under Rule 4901:1-29-06 of the OAC. For the purpose of procuring competitive retail natural gas services, this requirement does not apply to automatic Governmental Aggregation and for the percentage of income payment program.
- E) All Suppliers and Governmental Aggregators shall provide the Commission's staff with a name, telephone number, and e-mail address of a contact person who will respond to

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Commission concerns pertaining to consumer complaints. If any of the required information relating to the

**GENERAL PROVISIONS (Contd.)**

contact person should change, the Supplier or Governmental Aggregator shall provide advance notice of such changes to the Commission.

**RECORDS AND RETENTION**

- A) The Company (for records retention related to competitive retail natural gas services), each Supplier and each Governmental Aggregator shall establish and maintain records and data sufficient to:
- 1) Verify its compliance with the requirements of any applicable Commission rules; and
  - 2) Support any investigation of Customer complaints.
- B) Unless otherwise prescribed in this chapter, all records required by this chapter shall be retained for no less than two years.
- C) Unless otherwise prescribed by the Commission or its authorized representatives, all records required by this chapter shall be provided to the Commission staff within three business days of its request.

**MARKETING AND SOLICITATION**

- A) Each Supplier and Governmental Aggregator that offers competitive retail natural gas service to Customers shall provide, in marketing materials that include or accompany a service contract, sufficient information for Customers to make informed cost comparisons.
1. For fixed-rate offers, such information shall, at minimum, include:
    - a) The cost per Ccf or Mcf, whichever is consistent with the Company's current billing format, for natural gas supply;
    - b) The amount of any other recurring or nonrecurring Supplier or Governmental Aggregator charges; and
    - c) A statement that the Supplier's or Governmental Aggregator's rate is exclusive of all applicable state and local taxes and the Company's service and delivery charges.
  - 2) For variable-rate offers, such information shall, at minimum, include:
    - a) A clear and understandable explanation of the factors that will cause the price to vary (including any related indices) and how often the price can change;
    - b) The amount of any other recurring or Supplier or Governmental Aggregator charges; and
    - c) A statement that the Supplier's or Governmental Aggregator's rate is exclusive of all applicable state and local taxes and the Company's service and delivery charges.

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- B) A Supplier's or Governmental Aggregator's promotional and advertising material shall be provided to the Commission or its staff within three business days of a request by the Commission or its staff.
- C) No Supplier or Governmental Aggregator may engage in marketing, solicitation, sales acts, or practices which are unfair, misleading, deceptive, or unconscionable in the marketing, solicitation, or sale of a competitive retail natural gas service. Such unfair, misleading, deceptive, or unconscionable acts or practices include, but are not limited to, the following:
- 1) Soliciting Customers for a competitive retail natural gas service:
    - a) After suspension, rescission, or conditional rescission of certification by the Commission; or
    - b) After denial of certification renewal by the Commission.
  - 2) Failing to comply with paragraph (A) or (B) of this section;
  - 3) Failing to provide in or with its advertisements and promotional materials that make an offer for sale, a toll-free/local telephone number (and address for printed materials) which the potential Customer may call or write to request detailed information regarding the price, terms, conditions, limitations, and restrictions;
  - 4) Soliciting via telephone calls initiated by the Supplier or Governmental Aggregator (or its agent) without first:
    - a) Obtaining the list of Customers who have requested to be placed on a "do not call" list, which shall be created and maintained by the Commission; and
    - b) Obtaining monthly updates of the Commission-maintained "do not call" list;
  - 5) Engaging in telephone solicitation of Customers who have been placed on the "do not call" list maintained by the Commission;
  - 6) Engaging in telephone solicitation to residential customers either before nine a.m. or after nine p.m.;
  - 7) Engaging in direct solicitation to Customers where the Supplier's or Governmental Aggregator's sales agent fails to wear and display a valid Supplier or Governmental Aggregator photo identification. The format for this identification shall be pre-approved by the Commission staff; and
  - 8) Advertising or marketing offers that:
    - a) Claim that a specific price advantage, savings, or guarantee exists if it does not, or may exist if it will not;
    - b) Claim to provide a competitive retail natural gas service when such an offer is not a bona fide offer to sell such services;

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**MARKETING AND SOLICITATION (Contd.)**

- c) Offer a fixed price per Ccf or Mcf, whichever is consistent with the Company's current billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges;
- d) Offer a variable price per Ccf or Mcf, whichever is consistent with the Company's current billing format, for competitive retail natural gas service without disclosing all recurring and nonrecurring charges; and
- e) Fail to disclose all material limitations, exclusions, and offer expiration dates.

**OBLIGATIONS TO THE COMPANY**

Each Supplier participating in the Pooling Program shall:

- 1) Deliver gas to the Company on a firm basis on behalf of the Supplier's pool members in accordance with the requirements of the "Gas Supply Aggregation/Customer Pooling Agreement".
- 2) Establish and maintain a credit-worthy financial position to enable the Supplier to indemnify the Company and the Customers for costs incurred as a result of any failure by Supplier to deliver gas in accordance with the requirements of the program and to assure payment of any PUCO-approved charges for any such failure.
- 3) Make good faith efforts to resolve all disputes between Supplier and its Pool Customers and to cooperate with resolution of any joint issues with Company.
- 4) Refrain from requesting Customer-specific billing, payment, and usage history without first having received the Customer's approval to access such information.

Failure to fulfill any of these obligations may subject Supplier to consequences set forth in the Consequences of Supplier's Failure to Perform or Comply section of this Tariff Sheet.

**CUSTOMER INFORMATION LIST**

On or before May 1, 2003, Company shall make available to Suppliers an electronic list of Customer information for Customers who are eligible to participate in the Program. Such list shall be updated quarterly and shall, at a minimum, contain the following information regarding each Customer: name, service and mailing addresses, meter read date or schedule, and the most recent 12 months of consumption data. The fee for this Customer information list is set forth in Sheet No. 45 herein.

**GOVERNMENTAL AGGREGATION**

Governmental Aggregators shall follow the Commission's rules for formation and operation of a Governmental Aggregation.

On or before May 1, 2003 and upon the request of a Governmental Aggregator, the Company will provide, on a best efforts basis, an update list of Eligible Customers' names, service and mailing addresses, account numbers, and other Customer information list data for all Eligible Customers residing within the Governmental Aggregator's boundaries. Except for the inclusion of information

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for Customers who have opted-off the Company's Customer information list for Suppliers and Company account numbers, the Customer information contained in such list shall be consistent

**GOVERNMENTAL AGGREGATION (Contd.)**

with any Customer information list provided to Suppliers described herein. The Governmental Aggregator will pay a fee for a copy of said list, as set forth in Sheet No. 45 herein. The Governmental Aggregator shall not disclose or use a Customer's account number or any Customer information regarding those Customers who have opted off the Company's Customer information list, without the Customer's express written consent.

Prior to the Company including a Customer's natural gas account in a Governmental Aggregation, the Governmental Aggregator shall provide each Eligible Customer written notice that their account will be automatically included in the aggregation notice unless the Customer affirmatively opts out of the aggregation. The Company shall switch Eligible Customers, who have not opted out of the Governmental Aggregation, to or from a Governmental Aggregation under the same processes described herein for Suppliers.

**CUSTOMER SIGN-UP PROCEDURES**

Customers desiring to participate in the Program must execute a written Supply Contract with a Supplier that states that the Customer has agreed to participate in the Program and which sets forth the terms and conditions of the Customer's gas supply purchase. The Supplier may design the format of the Supply Contract, but at a minimum, it must comply with the applicable provisions specified in Rules 4901:1-29-10 and 4901:1-29-11 of the O.A.C.

In the alternative, Customers desiring to participate in the Program may enroll with a Supplier via telephone or Internet. Under these methods, the Supplier must retain proof of Customer consent as required by the Commission.

The Supply Contract, or alternate proof of Customer consent in the case of telephonic or Internet enrollment, will be used to resolve disputes if the validity of an account sign up comes into question. If requested by the Company, PUCO (in the case of Non-Mercantile Customers only) or OCC (in the case of residential Customers only), Supplier must provide a copy of a specific Supply Contract, or alternate proof of Customer consent in the case of telephonic or internet enrollment, within three (3) business days of any such request.

Regardless of the Customer enrollment method used, within 3 business days after completion of enrollment (unless a later date agreed to or Customer rescinds), Supplier will provide the Company with an electronic file in a format specified by the Company, containing a listing of all Customers that Supplier has signed up or desires to drop since its last submission. Among other things, this list shall include each Pool Customer's name, service address and Company account number. The Company will evaluate the information provided for accuracy and Customer eligibility, and provide Supplier with a confirmation report within three (3) business days. In the event more than one Supplier includes the same Pool Customer on their enrollment files to begin the same period, the Customer will be assigned to the Supplier whose acceptable enrollment was first processed by the Company.

Once complete and accurate information supporting a Customer joining or leaving Supplier's Pool is received and confirmed by Company, the change will be effective with the Customer's next on-cycle meter reading after the Customer's Enrollment Processing Period. If a Customer rescinds

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their enrollment prior to commencing service with a Supplier, the Company shall notify the Supplier within two business days of the Customer's rescission.

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#### **CUSTOMER SIGN-UP PROCEDURES (Contd.)**

Customer will remain with its Supplier until: 1) the Customer is reverted to Sales Service due to non-payment or Supplier default; 2) the Customer or Supplier notifies the Company that the Customer should revert to the Company's Sales Service; 3) the Customer joins the PIPP program; or 4) when the Company's information system has the necessary capability, which will occur on or after May 1, 2003, the Customer's name, service address and account number appear on another Supplier's electronic enrollment file listing. If a Customer moves from one address to another within the Company's service territory; a) nothing in this tariff shall be construed to impact the Supplier/Customer contract by virtue of that move; b) the Company's current billing system needs confirmation in order to maintain Program participation with the Supplier because of the location change within the Company's service territory; c) in order to maintain Program participation with the Supplier, the Supplier must confirm enrollment via Customer authorization once the new distribution service account with the Company has been established; d) when a Customer changes their service address within the Company's service territory, the Customer will be billed for Sales Service for a period of no more than one billing cycle plus 11 days, provided that a timely enrollment notice is received from the Supplier; e) the Customer and the Supplier may minimize the time the Customer is billed under Sales Service by promptly providing the Company with the new enrollment notice. If the Customer's current Supplier initiates Customer's termination in the Program, the Company shall issue a written notification to the Customer informing Customer of such change. Customers who on their own initiative decide to terminate their participation in the Program will be permitted to do so without the Company making any determination regarding whether the Customer is contractually permitted to make such move. The Company shall not be liable to the Supplier or Customer for allowing the Customer to revert to Sales Service. The Company is not responsible for tracking Supplier contract terms and conditions between Suppliers and Customers and shall not be liable for any default of such contract.

If the Company rejects a Customer from enrollment, the Supplier shall notify the Customer within three business days from the Company's notification of rejection that the Customer will not be enrolled or enrollment will be delayed, along with the reason(s) therefor.

Prior to installing additional information system capability on or after May 1, 2003, the Company shall reject an enrollment request from another Supplier for a Customer currently with a Supplier, unless the current Supplier has submitted an electronic drop notification to the Company prior to receipt of the new electronic enrollment request from another Supplier. In enrollment situations where the necessary drop notification has been received or the Customer is currently receiving Sales Service, the Company shall, prior to commencing competitive retail natural gas service with the subsequent Supplier, mail the Customer a confirmation notice stating:

- 1) The Company has received a request to enroll the Customer for competitive retail natural gas service with the named Supplier;
- 2) The date such service is expected to begin; and
- 3) How the Company may be contacted.

After installing additional information system capability on or after May 1, 2003, the Company will accept an enrollment from another Supplier for a Customer who is currently with a Supplier, without the current Supplier first submitting an electronic drop notification to the Company. In enrollment situations where a Customer is already being served by a Supplier or the Customer is currently receiving Sales Service, the Company shall, prior to commencing competitive retail natural gas service with the subsequent Supplier, mail the Customer a confirmation notice stating:

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#### **CUSTOMER SIGN-UP PROCEDURES (Contd.)**

- 1) The Company has received a request to enroll the Customer with the named Supplier, and, in the case of an enrollment request for a Customer who is currently with another Supplier, a statement that Company's records reflect that Customer is currently enrolled with another Supplier along with an admonition that Customer should review the terms and conditions of the incumbent Supplier's Contract for Customer's obligations under said Contract;
- 2) The date such service is expected to begin;
- 3) The Customer has seven business days from the postmark date on the notice to contact the Company telephonically, in writing or via the Internet to rescind the enrollment request or notify the Company that the change of the Supplier was not requested by the Customer; and
- 4) The Company's appropriate contact information, including, but not limited to, the Company's toll-free telephone number

Prior to the Company installing additional information system capability on or after May 1, 2003, a Customer's account is subject to the applicable GCR adjustments (BA, AA, or RA) during the initial twelve-month period of the Customer's participation in the Company's Program. If a Customer is returned to Sales Service for any reason during the initial twelve-month period and the Customer subsequently chooses another Supplier or Governmental Aggregator, then the GCR adjustments will only apply for the remaining number of months left in the initial twelve-month period. Any Customer returning to the Company's Sales Service because of Supplier default, abandonment, slamming or certification rescission will not be liable for the Company's GCR adjustments while receiving Sales Service, provided that the Customer begins receiving service from a Supplier no more than sixty (60) days from the date of the Customer's return to Sales Service. Until the additional information system capability is installed, a Customer's account is only subject to the GCR adjustments during the initial twelve months of the Customer's participation in the Company's Program.

After the Company installs additional information system capability on or after May 1, 2003, a Customer's account may be subject to the GCR adjustments longer than the initial twelve-month period of the Customer's participation in the Company's Program, based on the amount of time the Customer receives Sales Service when returning from a Supplier. If a Customer is returned to Sales Service for any reason during the initial twelve-month period and the Customer begins receiving service from a Supplier no more than sixty (60) days from the date of the Customer's return to Sales Service, then the GCR adjustments will only apply for the remaining number of months left in the initial twelve-month period. However, any time a Customer returns to Sales Service from a Supplier for any reason and continues receiving such service for more than sixty (60) days, the twelve-month obligation to the Company's GCR adjustments renews itself when the Customer enrolls with a Supplier. Any Customer returning to the Company's Sales Service because of Supplier default, abandonment, slamming or certification rescission will not be liable for the Company's GCR adjustments while receiving Sales Service, provided that the Customer begins receiving service from a Supplier no more than sixty (60) days from the date of the Customer's return to Sales Service.

If the Customer rescinds their enrollment, the Company will initiate said rescission and notify the Supplier or Governmental Aggregator.

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Any Customer returning to Sales Service as a result of Supplier default, slamming, Supplier abandonment, or Supplier certification rescission will not be liable for any costs associated with the switch.

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#### **ENROLLMENT OF CUSTOMERS**

Suppliers may enroll Customers by mail, facsimile, direct solicitation, telephone, and the Internet. When soliciting and/or enrolling Non-Mercantile Customers, Supplier must adhere to the requirements set out in Rules 4901:1-29-05 and 4901:1-29-06 of the OAC.

#### **CONTRACT ADMINISTRATION AND RENEWAL NOTICES**

Supplier must adhere to the contract administration and renewal requirements for Non-Mercantile Customers set out in Rule 4901:1-29-10 of the OAC.

#### **POOL CUSTOMER BILLING OPTIONS**

Suppliers may elect one of the following two billing options for its Pool Customers that do not participate in PIPP.

##### **Option 1 – Company Consolidated Billing**

The Pool Customer shall receive one bill from the Company that indicates the name of the Supplier from whom the Customer is receiving its gas supply and includes an amount for the Supplier's gas supply charges in accordance with the pricing arrangements agreed upon between the Supplier and the Customer, including any taxes for which the Supplier must collect. The Company's consolidated bill may provide the budget amounts, past due balances, payments applied, credits, late charges, and total amount due on a consolidated basis only. A Supplier who elects this billing option will be provided, at no charge, as many as 25 actively billed rate codes to which a Customer may be assigned by the Supplier and billed by the Company. Additional actively billed rate codes will be provided by the Company for a fee as set forth in Sheet No. 45 of this Tariff. Each Supplier will be limited to a total of 40 actively billed rate codes for which the Supplier may submit to the Company a price change each month for each rate code. Price changes must be submitted to the Company no later than the 25<sup>th</sup> day each month for bills rendered the next month. In the event that a Supplier desires extraordinary billing system changes, the Supplier shall be charged for the cost of implementing such changes, as set forth in Sheet No. 45 of this Tariff.

The Pool Customer will be responsible for making payment to the Company for the entire amount shown on the bill, including both the Company's and the Supplier's charges. In the event that a Customer remits to the Company less than the full payment due, the payment received shall first be applied to the Company's charges shown on the bill plus any Arrearages relating to such Company charges from previous billing periods, and the residual amount shall be applied to the Supplier's portion of the bill, including the taxes thereon. Supplier shall be promptly notified of any payments received from Customers attributable to Supplier's portion of the bill. Payment to Supplier for payments received from Customers as noted above will be made within five (5) business days after mid-month and end-of-month numbers are available.

Where Supplier has elected service under Rate ARM, Accounts Receivable Management Service, the Company shall remit to the Supplier, by wire transfer or otherwise, payment for all gas billed to the Supplier's Customers by the Company on Supplier's behalf, including taxes attributable to Supplier's portion of the bill based on the terms contained in the respective Supplier's ARM agreement.

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**Option 1 – Company Consolidated Billing (Contd.)**

Supplier shall be responsible for dispersing to the appropriate taxing authorities any tax that is attributable to Supplier's portion of the bill.

In the event, and to the extent, that a Customer remits to the Company less than the amount which would be attributable to the Company's charges and Arrearages included on the bill, the Customer shall be subject to the same late charges and disconnection procedures which would be applicable if the Customer were receiving Sales Service.

**Option 2 – Dual Billing**

The Customer shall receive two bills as follows:

- a) The Company shall bill and collect for its portion of the bill that includes charges for gas transportation service and all applicable Riders. The Company's bill shall include the Supplier's name and a statement that the Supplier is responsible for billing Supplier's charges. In the event that a Customer remits to the Company less than the amount included on the Company's bill, Customer shall be subject to the same late charges and disconnect rules that would be applicable if the Customer were receiving Sales Service.
- b) Supplier shall be responsible for billing and collecting its part of the bill including any past due amounts that are due from Supplier's own prior billings. To facilitate Suppliers' portion of the billing each month, the Company will provide each Supplier with an electronic notification of the monthly meter readings of all Customers within Supplier's Pool that have been billed by the Company. Such billing data will correspond to the meter reading data on which the Company based its bill for transportation service. A Supplier may terminate gas sales to any Pool Customer for non-payment and remove the Customer from its Pool in accordance with the procedures for dropping Customers from a Supplier's Pool pursuant to this Tariff Sheet.

**CUSTOMER DISCONNECTION**

The Company may disconnect service to a Customer for non-payment of its Regulated Utility Charges. The Supplier is not permitted to physically disconnect Customer's gas service for non-payment of the Supplier gas charges.

**CUSTOMER ACCESS AND COMPLAINT HANDLING**

Each Supplier shall cooperate with the Company, the PUCO, and the OCC (in the case of residential Customers) to answer inquiries and resolve disputes. The following procedures shall be applicable to customer access and complaint handling:

- A) Customer access
  - 1) Each Supplier or Governmental Aggregator shall ensure Customers reasonable access to its service representatives to make inquiries and complaints, discuss charges on customer bills, terminate competitive service, and transact any other pertinent business.
  - 2) Telephone access shall be toll-free and afford Customers prompt answer times during normal business hours.

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**CUSTOMER ACCESS AND COMPLAINT HANDLING (Contd.)**

- 3) Each Supplier or Governmental Aggregator shall provide a twenty-four hour automated telephone message instructing callers to report any service interruptions or natural gas emergencies to the Company.

B) Customer complaints

- 1) Each Supplier or Governmental Aggregator (and/or its agent) shall investigate Customer complaints (including Customer complaints referred by the Company) and provide a status report within three business days following receipt of the complaint to:
  - a) The customer, when the complaint is made directly to the Supplier or Governmental Aggregator, or
  - b) The Customer and Commission staff, when a complaint is referred to the Supplier or Governmental Aggregator by the Commission staff.
- 2) The Governmental Aggregator may choose to have the Supplier perform certain functions as the Governmental Aggregator's agent. However, the Governmental Aggregator is still responsible for ensuring that the requirements of these rules are met.
- 3) If an investigation is not completed within ten business days, the Supplier or Governmental Aggregator (and/or its agent) shall provide status reports to the Customer, or if applicable, to the Customer and Commission staff. Such status reports shall be provided at three business day intervals until the investigation is complete, unless the action that must be taken will require more than three business days and the Customer has been so notified.
- 4) The Supplier or Governmental Aggregator (and/or its agent) shall inform the customer, or the Customer and Commission staff, of the results of the investigation, orally or in writing, no later than three business days after completion of the investigation. The Customer or Commission staff may request the report in writing.
- 5) If a Customer disputes the Supplier's or Governmental Aggregator's (and/or its agent's) report, the Supplier or Governmental Aggregator shall inform the Customer that the Commission staff is available to mediate complaints. The Supplier or Governmental Aggregator (and/or its agent) shall provide the Customer with the address, local/toll-free telephone numbers, and TDD/TTY telephone number of the Commission's public interest center.
- 6) Each Supplier or Governmental Aggregator shall retain records of Customer complaints, investigations, and complaint resolutions for two years after the occurrence of such complaints and shall provide such records to the Commission staff within three business days of request.
- 7) Each Supplier or Governmental Aggregator shall make good faith efforts to resolve disputes and cooperate with the resolution of any joint issues with the Company.

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**CUSTOMER ACCESS AND COMPLAINT HANDLING (Contd.)**

- C) If Customers contact the Company concerning competitive retail natural gas service issues, the Company shall:
- 1) Review the issue with the Customer to determine whether it also involves the Company;
  - 2) Cooperate with the resolution of any joint issues with the Supplier or Governmental Aggregator; and
  - 3) Refer the Customer to the appropriate Supplier or Governmental Aggregator in those instances where the issue lacks Company involvement.
- D) Slamming Complaints
- 1) A slamming complaint is a Customer's allegation that the Customer's Supplier or Governmental Aggregator has been switched without the Customer's authorization.
  - 2) If a Customer contacts the Company, Supplier or Governmental Aggregator alleging that the Customer's Supplier has been switched without the Customer's authorization, the Company, Supplier or Governmental Aggregator shall:
    - a) Provide the Customer any evidence relating to the Customer's enrollment;
    - b) Refer the Customer to the Commission's public interest center;
    - c) Provide the Customer with the local/toll-free telephone numbers of the Commission's consumer service department; and
    - d) Cooperate with the Commission staff in any subsequent investigations of the slamming complaint.
  - 3) Except as otherwise provided in Chapter 4901:1-28 of the OAC, if the Supplier or Governmental Aggregator cannot produce valid documentation confirming that the Customer authorized the switch, there shall be a rebuttable presumption that the Customer was switched without authorization. Such documentation shall include one of the following, in conformance with the requirements of Rule 4901:1-29-06 of the OAC:
    - a) A signed contract, in the case of direct enrollment;
    - b) An audio recording, in the case of telephonic enrollment; or
    - c) Electronic consent, in the case of internet enrollment.
  - 4) In the event that the Customer was switched from one Supplier or Governmental Aggregator to a different Supplier or Governmental Aggregator without authorization, the Customer's previous Supplier or Governmental Aggregator shall re-enroll the

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Customer without penalty under such Customer's original contract price for the duration of the original term and send the Company an electronic enrollment request. If the original Supplier or Governmental Aggregator is unable to return the Customer to the

**CUSTOMER ACCESS AND COMPLAINT HANDLING (Contd.)**

- the original contract price, the original Supplier or Governmental Aggregator may enroll the Customer in a new contract pursuant to the provisions of Rule 4901:1-29-06 of the OAC, or the Customer may select a new Supplier or return to the Company's GCR commodity service;
- 5) In the event that a Customer was switched from Sales Service to a Supplier or Governmental Aggregator without authorization, the Company shall switch the Customer back to Sales Service without penalty.

**UPSTREAM CAPACITY REQUIREMENTS**

Suppliers participating in the Company's firm transportation program must secure their own upstream firm interstate pipeline capacity required to meet Supplier's Rates FT and RFT pools' aggregate Adjusted MDQ less the firm interstate pipeline capacity assigned to the Supplier by the Company. Assignments and recalls of interstate pipeline capacity are mandatory for MDQ in excess of the Supplier's Rates FT and RFT pools' aggregate Adjusted MDQ as of April 1, 2007. Due to the physical configuration of the Company's system, and certain upstream interstate pipeline facilities, and to enable the Company to comply with lawful interstate pipeline tariffs and/or to maintain the Company's system integrity, the Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements. Specific delivery requirements will be electronically posted by the Company.

A Supplier, whose aggregate Pools' MDQ exceeds 6,000 Dth/day and who adds 3,000 Dth/day of additional MDQ, shall be assigned a proportionate amount of the Company's interstate pipeline firm transportation capacity by the Company. Additionally, the Company will recall proportionately some capacity from a Supplier whose aggregate Pools' MDQ is reduced by 3,000 Dth/day. This MDQ criterion will be reviewed by the Company semi-annually based on the MDQ as of September 30<sup>th</sup> with any release/recall becoming effective the following November 1<sup>st</sup>, and on the MDQ as of February 28<sup>th</sup>, with any release/recall becoming effective the following April 1<sup>st</sup>. Suppliers will be notified of any change to their released capacity by October 15<sup>th</sup> for winter capacity and by March 15<sup>th</sup> for summer capacity.

The assignment shall be structured as a release of capacity. The posted rate will be the rate for which the Company has contracted with the interstate pipeline. Any capacity with a discounted rate will be posted open to bids, with the Supplier being the prearranged bidder. All other capacity will be posted at the pipeline's maximum rate with the Supplier being the prearranged shipper.

The term of the release shall be on a seasonal basis, from November 1<sup>st</sup> through March 31<sup>st</sup> or April 1<sup>st</sup> through October 31<sup>st</sup>. Any incremental capacity changes will be handled by recalling the previously released capacity and re-releasing at the new amount.

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The Company shall assign interstate pipeline firm transportation capacity consistent with its delivery north/south allocation percentages and on a pro-rata basis to the Company's total capacity for the designated pipelines or the parties may choose a mutually agreed-upon assigned capacity portfolio.

#### **UPSTREAM CAPACITY REQUIREMENTS (Contd.)**

Capacity will be assigned to the Supplier on a "recall and reput" basis. The Company shall release this capacity utilizing the appropriate pipeline company's electronic bulletin board and the Supplier shall execute the service agreements so generated by the pipelines five (5) days prior to the end of the month to enable the Supplier to nominate gas suppliers under the service agreements for the following month. If the Supplier fails to execute the service agreements the charges for the released capacity will be added to the Supplier's Pool Invoice for the month.

Prior to the capacity release process, the Supplier shall comply with the appropriate pipeline's credit review and establish itself on the pipeline's Approved Bidders List (as defined in the interstate pipeline company's tariff).

The Company, as releasing shipper under a recallable release, remains liable to the pipeline for reservation charges. The Supplier will provide sufficient financial guaranty to the Company of its ability to pay such pipeline charges, unless the applicable pipeline company releases the Company from liability for the Supplier's pipeline reservation charges.

The Company reserves the right to change the type of information required as well as the nomination deadline to comply with the requirements of the interstate pipeline companies.

There will be no restrictions on the Supplier's use of the released capacity at such times that it is not required to deliver gas to the Company's system.

The Supplier may re-release all or a portion of the capacity to a replacement shipper who meets all the requirements to which the Supplier is subject including but not limited to the Company's right of recall. A re-release shall not relieve the Supplier of its obligations under the provisions of the capacity release by the Company.

The Supplier receiving assignment shall pay the pipeline(s) directly for all charges associated with the use of released capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, and penalties.

The Supplier shall not revise receipt and delivery points of the interstate pipeline company firm transportation capacity released by the Company, without written consent from the Company. The Supplier will be responsible for operating the assigned capacity consistent with all the terms and conditions set forth in the tariffs of the Company and the applicable pipeline companies.

#### **DAILY BALANCING**

The Company will provide and charge the Supplier for balancing service, which will be used to manage differences between the Company's required daily Supplier delivery and the actual Customer's consumption. There will be an annual election each year for Suppliers whose Pool MDQ is greater than 1,000 Dth/day to elect on or before January 15<sup>th</sup> each year either Rider FBS

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(Firm Balancing Service), Sheet No. 75 or Rider EFBS (Enhanced Firm Balancing Service), Sheet No. 74, to be effective on April 1<sup>st</sup> each year, A Supplier who elects Rider EFBS will be billed rates

#### **DAILY BALANCING (Cont'd)**

as set forth in Rider EFBS, Sheet No. 75. A Supplier whose Pool MDQ is less than 1,000 Dth/day

will receive balancing service under the Company tariff Rider FBS, Suppliers who elect Rider FBS **DAILY BALANCING** and Suppliers whose Pool MDQ is less than 1,000 Dth/day will be billed the balancing charge per Mcf as set forth on Rider FBS on all volumes consumed by the Supplier's Pool.

- a) Target Supply Quantities must be delivered each day based on the Company's forecasted temperatures and the aggregate demand curve for each Customer pool, all as more fully described within the "Gas Supply Aggregation/Customer Pooling Agreement" between the Company and Supplier. Any Supplier which fails to deliver gas volumes in accordance with that agreement may be terminated from further participation in the program.
- b) Suppliers are subject to Operational Flow Orders issued by the Company as described below. The Company may suspend from this program any Supplier which does not comply with an Operational Flow Order.
- c) Suppliers shall have the ability to make daily/monthly inter-pool trades under the Company tariff Rate GTS, Gas Trading Service.

#### **MEASUREMENT OF CONSUMED VOLUMES**

The Company will electronically provide each Supplier with a listing of the monthly meter readings and usages for all Customers within the Supplier's pool. Such monthly meter reading and usage data will correspond to the consumption data which the Company based its bill for local delivery service. Monthly volumes billed to participating Customers shall be considered actual volumes consumed, whether the meter reading is actual or calculated.

#### **ANNUAL RECONCILIATION**

The Company will reconcile imbalances on an annual basis, for each Supplier, through determination of the difference between (1) the Supplier's deliveries for the previous year and (2) the actual consumption plus the Company's Unaccounted-for Percentage on the Supplier's aggregate Customer Pool, both calculated at city gate, adjusted for recognition of all adjustments applicable to the previous year.

Suppliers will eliminate the imbalance through the exchange of gas with Company via a storage inventory transfer, an adjustment to their Rider EFBS, bank balance, or delivery over the next 30 days or longer if mutually agreed by Supplier and Company.

#### **OPERATIONAL FLOW ORDERS**

Suppliers are subject to the Company's issuance of operational flow orders which will direct each Supplier to adjust scheduled volumes to match the Customer Pool's estimated usage. For

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Suppliers that have elected Rider EFBS as their balancing option, the difference between scheduled deliveries from the interstate pipeline companies and the estimated Pool usage will be met by the EFBS. In the event that the Company's storage service provider has restricted excess storage withdrawals/injections and a Supplier exceeds Rider EFBS's MDDQ or MDBQ such excess quantities will be considered a failure to comply with the Operational Flow Order (OFO). However,

#### **OPERATIONAL FLOW ORDERS (Cont'd)**

on days with projected temperatures colder than the design winter peak day temperature, the Supplier will have two options. The Supplier may: 1) deliver to Company the volume of gas equal to their Adjusted Target Supply Quantity; or 2) deliver to Company only that volume equal to their Adjusted MDQ and rely on Company to acquire the incremental volume i.e., the difference between their Adjusted Target Supply Quantity and their Adjusted MDQ. If the Supplier selects the second option, the Supplier will pay the Company for costs the Company incurs in obtaining the incremental supply and may meet the delivery requirement with both its flowing supply and MDDQ. Failure of the Supplier to deliver volumes in accordance with its selected option may result in suspension or termination from further participation in Company's firm transportation program.

Failure to comply with an Operational Flow Order, which is defined as the difference between the daily OFO volume and actual daily deliveries, will result in the action and/or billing of the following charges:

#### **Under-deliveries**

- 1) the payment of a gas cost equal to the highest incremental cost paid by Company on the date of non-compliance;
- 2) one month's demand charges on the OFO shortfall. This charge shall not be imposed more frequently than once in any thirty day period, and
- 3) the payment of all other charges incurred by Company including but not limited to pipeline penalty charges on the date of the OFO shortfall.

#### **Over-deliveries**

- 1) any over-run delivered by Supplier will be confiscated by the Company and used for its general supply requirements, without compensation to Supplier.
- 2) Company shall bill and Supplier shall pay all charges incurred by Company including but not limited to penalty charges from the interstate pipelines for such excess deliveries, provided such penalties can be attributed to Supplier's over-run.

#### **SCHEDULING**

Supplier must make all necessary arrangements for scheduling natural gas deliveries to Company.

Each morning, by 9:00 A.M. E.S.T., the Company will post on its electronic bulletin board (EBB) an "Adjusted Target Supply Quantity" that the Supplier will be required to deliver into the Company's designated city gate receipt points during the following gas day. For purposes of the Company's firm transportation program, the "Adjusted Target Supply Quantity" is defined as the Target Supply Quantity, plus or minus any adjustments that Supplier may be required to make to its daily deliveries, plus the daily firm requirements of all Customers being served by Supplier under both

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Duke Energy Ohio  
139 East Fourth Street  
Cincinnati, Ohio 45202

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Rate IT and Rate FT, as specified within Supplier's Firm Transportation Service for Interruptible Transportation Customers contracts. The quantities so calculated will then be adjusted for Unaccounted-for Gas Loss back to the Company's city gate, and converted to Dth. By 1:00 P.M. E.S.T. each day, Supplier shall notify the Company through the EBB of its total city gate nominations for the next day, by Company Rate Schedule, for each pipeline company delivering gas into the Company's system.

#### **SCHEDULING (Cont'd)**

The Adjusted Target Supply Quantities that will be used to define the Supplier's next day delivery obligations shall also be the quantities against which the Supplier's pipeline confirmed daily deliveries into the Company's system combined with quantities to/from Supplier's Rider EFBS balancing service, if applicable, will be compared in order to determine Supplier's daily overrun/underrun volumes. Daily overrun/underrun volumes determined in this manner shall form the bases for daily "cash-outs," OFO charges, daily pipeline penalty charge flow throughs, and any other charges under any of the Company's applicable tariffs, that are levied based on Supplier's failure to deliver the Adjusted Target Supply Quantities of gas into the Company's system.

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

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

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

#### **OTHER RULES AND REGULATIONS**

Except to the extent superseded herein, the Company's Rules and Regulations Governing the Distribution and Sale of Gas and such other Commission rules as are applicable shall apply to all gas transportation service provided hereunder.

#### **CONSEQUENCES OF SUPPLIER'S FAILURE TO PERFORM OR COMPLY**

If a Supplier fails to deliver gas in accordance with the full service requirements of its Pool Customers, the Company shall supply gas temporarily to the affected Pool Customers and shall bill Supplier the higher of the following: 1) the fair market price for that period or 2) the highest incremental cost of gas for that period that the Company actually paid for gas supplies, including transportation and all other applicable charges. The Company shall have the right to immediately and unilaterally invoke Suppliers' letter of credit, parental guarantee, or any other collateral posted

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by the Supplier in order to enforce recovery from Supplier of the cost of these replacement supplies.

If a Supplier fails to deliver gas in accordance with the full service requirements of the Gas Supply Aggregation/Customer Pooling Agreement, or otherwise fails to comply with the provisions of this Tariff Sheet, including those specified in the Obligations to the Company section, the Company shall have the discretion to initiate the process to suspend temporarily or terminate such Supplier's further Program participation. To initiate the process, the Company shall serve a written notice of

#### **CONSEQUENCES OF SUPPLIER'S FAILURE TO PERFORM OR COMPLY**

such failure in reasonable detail and with a proposed remedy to the Supplier and the Commission, as set forth in Rule 4901:1-27-12(J) of the OAC.

On or after the date said notice has been served, the Company may file with the Commission a written request for authorization to terminate or suspend the Supplier from participation in the Company's Program. Except for failure due to under-delivery or non-delivery, if the Commission, or any Attorney Examiner, does not issue an entry to suspend or reject the action proposed by the Company within ten (10) business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the eleventh (11<sup>th</sup>) business day. If the Supplier's failure is due to under-delivery or non-delivery and, if the Commission, or an Attorney Examiner, does not act within five (5) business days after receipt of the request, the Company's request to terminate or suspend shall be deemed authorized on the sixth (6<sup>th</sup>) business day.

If the Supplier is suspended or terminated from the Program, Customers in such Pool shall revert to Company's Sales Service, unless and until said Customers join another Supplier's Pool. Any termination or suspension of the Gas Supply Aggregation/Customer Pooling Agreement pursuant to any provision of this section shall be without waiver of any remedy, whether at law or in equity, to which the party not in default otherwise may be entitled for breach of the Agreement.

#### **ALTERNATIVE DISPUTE RESOLUTION**

Alternative Dispute Resolution shall be offered to Suppliers and the Company as a means to address disputes and differences that may arise under this tariff. Alternative Dispute Resolution shall be conducted in accordance with the Commission rules or as agreed upon among the applicable parties. Nothing herein shall act to deprive any party of its legal rights in a jurisdictional forum.

#### **FORCE MAJEURE**

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

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

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**COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES**

In operation of its firm transportation program, the Company will adhere to the following Standards of Conduct for Marketing Affiliates:

- 1) Company must apply any tariff provision relating to transportation services in the same manner to the same or similarly situated persons if there is discretion in the application of the provision.

**COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES (Contd.)**

- 2) Company must strictly enforce a tariff provision for which there is no discretion in the application of the provision.
- 3) Company may not, through a tariff provision or otherwise, give any Supplier including its marketing affiliate or Customers of any Supplier including its affiliate, preference over any other gas Suppliers or their Customers in matters, rates, information, or charges relating to transportation service including, but not limited to, scheduling, balancing, metering, storage, standby service, or curtailment policy. For purposes of the Company's firm transportation program, any ancillary service provided by Company, e.g., billing and envelope service, that is not tariffed will be priced and made equally available to all.
- 4) Company must process all similar requests for transportation in the same manner and within the same approximate period of time.
- 5) Company shall not disclose to anyone other than a Company employee any information regarding an existing or proposed gas transportation arrangement, which Company receives from (i) a Customer or Supplier, (ii) a potential Customer or Supplier, (iii) any agent of such Customer or potential Customer, or (iv) a Supplier or other entity seeking to supply gas to a Customer or potential Customer, unless such Customer, agent, or Supplier authorizes disclosure of such information.
- 6) If a customer requests information about Suppliers, Company shall provide a list of all Suppliers operating on its system, but shall not endorse any Supplier nor indicate that any Supplier will receive a preference because of a corporate relationship.
- 7) Before making Customer lists available to any Supplier, including any Company marketing affiliate, Company will post on its electronic bulletin board a notice of its intent to make such Customer list available. The notice shall describe the date the Customer list will be made available, and the method by which the Customer list will be made available to all Suppliers.
- 8) The Company will, to the extent practicable, separate the activities of its operating employees from its affiliate marketing employees in all areas where their failure to maintain independent operations may have the effect of harming Customers or unfairly disadvantaging unaffiliated Suppliers under the Company's transportation programs.

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- 9) Company shall not condition or tie its agreements for gas supply or for the release of interstate pipeline capacity to any agreement by a gas Supplier, Customer or other third party in which its marketing affiliate is involved.
- 10) Company and its marketing affiliate shall keep separate books of accounts and records.
- 11) Neither the Company nor its marketing affiliate personnel shall communicate to any Customer, Supplier or third party the idea that any advantage might accrue for such Customer, Supplier or third party in the use of Company's service as a result of that Customer's, Supplier's or other third party's dealing with any Supplier including its marketing affiliate.

**COMPANY STANDARDS OF CONDUCT WITH RESPECT TO MARKETING AFFILIATES (Contd.)**

- 12) The Company's complaint procedure for issues concerning compliance with these standards of conduct is as follows. All complaints, whether written or verbal, shall be referred to the Company's designated attorney. The Company's designated attorney shall orally acknowledge the complaint within five (5) working days of receipt. The complainant party shall prepare a written statement of the complaint which shall contain the name of the complainant and a detailed factual report of the complaint, including all relevant dates, companies involved, employees involved, and specific claim. The Company's designated attorney shall communicate the results of the preliminary investigation to the complainant in writing within thirty (30) days after the complaint was received including a description of any course of action which was taken. He or she shall keep a file with all such complaint statements for a period of not less than three years.
- 13) The Company shall not offer its affiliate Supplier a discount or fee waiver for transportation services, balancing, meters or meter installation, storage, standby service or any other service that would advantage the Company's affiliate Supplier.
- 14) The Company will not use its name and logo in its marketing affiliate's promotional material, unless the promotional material discloses in plain, legible or audible language, on the first page or at the first point where the Company's name and logo appear, that its marketing affiliate is not the same entity as the Company. The Company is also prohibited from participating in exclusive joint activities with any Supplier, including its affiliate, such as advertising, marketing, sales calls or joint proposals to any existing or potential Customers.

**SERVICE REGULATIONS**

The supplying of, and billing for, service and all conditions applying thereto are subject to the jurisdiction of the Public Utilities Commission of Ohio, and to Company's Service Regulations currently in effect, as filed with the Public Utilities Commission of Ohio, as provided by law.

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

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

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

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

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

**ARTICLE I**

**Definitions**

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

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

9. Operational Flow Order. "Operational Flow Orders", or "OFOs", are notices issued by the Company via its electronic bulletin board (EBB) or fax transmission requiring Suppliers to adjust their daily deliveries into the Company's system to match, match or be less than, or match or be more than their Adjusted Target Supply Quantity for the Supplier's Pool of Customers receiving service under Rates FT and RFT. Supplier shall be required to deliver natural gas, or cause natural gas to be delivered, into the Company's specified city gate receipt points, if it is determined by the Company to be necessary and the specified receipt points and amounts are identified in the OFO notice posted on the EBB.
10. Over-deliveries. "Over-deliveries", or "Positive Imbalance Volume" is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.
11. Pool Customer. "Pool Customer" means a recipient of Transportation Service provided by the Company under Tariff Sheet Nos. 33, or 52 who receives gas supply from a Supplier as a member of a Pool.
12. Pooling Program. "Pooling Program" refers to the services provided under Residential Firm Transportation Service (Rate RFT – Sheet No. 33), Residential Firm Transportation Service – Low Income (Rate RFTLI – Sheet No. 36), Firm Transportation Service – Large (Rate FT-L – Sheet No. 37), Firm Transportation Service – Small (Rate FT-S – Sheet No. 52) and Full Requirements Aggregation Service (Rate FRAS – Sheet No. 44).
13. Pooling Service. "Pooling Service" is a service provided by the Company that allows Suppliers (marketers, Suppliers, brokers, and producers) to deliver to the Company, on an aggregated basis, those natural gas supplies that are needed to satisfy the full firm requirements of the one, or more, firm transportation Customers that comprise the membership of the Supplier's "pool", all in accordance with rules that the Company has established regarding delivery requirements, advancing, banking, billing and payments, bonding, Supplier performance requirements, and other similar requirements for participation as a "Supplier" in the Rate FT and RFT, firm transportation programs.
14. Positive Imbalance Volume. "Positive Imbalance Volume", or "Over-deliveries", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period is less than the sum of the volumes available for redelivery by the Company to the Pool during the same period.
15. Program. "Program" means the Company's firm transportation/supply aggregation Customer choice program under Rate RFT, Rate RFT-LI, Rate FT-S and Rate FT-L, and Rate FRAS, respectively.
16. PUCO. "PUCO" means the Public Utilities Commission of Ohio.
17. Target Supply Quantities. "Target Supply Quantities", or "TSQ", are defined as daily city gate delivery quantities determined from statistical models used to estimate the daily gas usage of the full requirements firm Customers in Supplier's Pool. These daily gas usage estimates are adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.
18. The Pool. A group of one or more Customers, joined together by the Supplier for supply management purposes under this Agreement, which are receiving service pursuant to the Company's firm transportation tariffs.
19. Unaccounted-for Gas Loss. "Unaccounted-for Gas Loss" is the difference between the Company's total available gas commodity and the total gas commodity accounted for (metered) as sales and transported volumes. The difference is comprised of factors including but not limited to leakage, discrepancies due to meter inaccuracies, Company use and with the use of cycle billing, an amount of gas used but not billed.
20. Unaccounted-for Percentage. "Unaccounted-for Percentage" means a percentage calculated by dividing the difference between: 1) the aggregate volume of gas received into Company's system from the

interstate pipelines plus the volume of vaporized propane, all converted to Mcf using the Btu content associated with such supply source and 2) the aggregate volume consumed by all of Company's gas Customers over that same period, by the Mcf volume calculated in item 1) above.

21. Under-deliveries. "Under-deliveries", or "Negative Imbalance Volume", is the amount by which the sum of all volumes actually delivered to the Pool Customers during the period exceeds the sum of the volumes available for redelivery by the Company to the Pool during the same period.

## ARTICLE II

### Term

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

## ARTICLE III

### Requirements For Program Participation

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

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

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

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

#### ARTICLE IV

##### Full Requirements Service

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

#### ARTICLE V

##### Supply Co-Management Defined

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

1. The Company will maintain statistical models that will be used to estimate the daily gas usage of the full requirements firm Customers in Supplier's pool. These daily gas usage estimates, as adjusted for Unaccounted-for Gas Losses, and converted from volumetric to thermal quantities, will be identified as Supplier's "Target Supply Quantities". (Note: The Unaccounted-for Gas Loss adjustment will be based on the Company's system average Unaccounted-for Percentage.) A database will be created by the Company, which, at a minimum, will track daily usage estimates on an aggregated basis for all full requirements firm Customers in Supplier's pool.
2. A daily load forecast methodology, developed by the Company, will be used to form the daily Target Supply Quantity for each Supplier's pool. The daily estimates by revenue class in each Supplier's pool will be calculated using only the usage information of firm full requirements Customers. These daily estimates are then adjusted for Unaccounted-for Gas Losses, and converted to Dth. The revenue class estimates for each Supplier are then combined to form the Target Supply Quantity for the Supplier's overall pool. Suppliers are responsible for informing the Company when their Customer's

load profiles deviate significantly from their historical load profiles. The Company will make the necessary adjustments to the Target Supply Quantity calculation to account for the new profiles.

3. Starting with the Supplier's daily Target Supply Quantity, the Company will each morning by 9:00 A.M. EST post, via its electronic bulletin board (EBB), an "Adjusted Target Supply Quantity" that Supplier will be required to deliver into the Company's designated city gate receipt points during the following day. The "Adjusted Target Supply Quantity" is defined as the Target Supply Quantity, plus or minus any adjustments that Supplier is required to make to its daily deliveries pursuant to Paragraph (5) of this Article V, plus FT requirements for IT Customers, consisting of daily deliveries for the firm requirements of Customers being served under both Rate IT and Rate FT, in quantities as specified in the "Gas Firm Transportation Service for Interruptible Transportation Customers Application/Contract Amendment," which are adjusted for Unaccounted-for Gas Losses and converted to Dth. By 1:00 P.M. E.S.T. each day, Supplier shall notify the Company via its EBB of its total city gate nominations for the next day, by Company Rate Schedule, for each pipeline company delivering into the Company's system.
4. The Adjusted Target Supply Quantities that are used to define the Supplier's next day delivery obligations shall also be the quantities against which Supplier's pipeline confirmed daily deliveries into the Company's system combined with quantities to/from Supplier's Rider EFBS (Enhanced Firm Balancing Service) balancing service if applicable, are compared in order to determine Supplier's daily overrun/underrun volumes. Daily overrun/underrun volumes determined in this manner shall form the bases for daily "cash-outs" OPO charges, daily overrun/underrun charges, daily pipeline penalty charge flow throughs, and any other charges under this Agreement that are levied based on Supplier's failure to deliver the Adjusted Target Supply Quantities of gas into the Company's system.
5. As the final element of its gas supply co-management obligation, Supplier shall be required to reconcile annually its gas deliveries into the Company's system with the actual billed transportation volumes delivered to end-user Customers within the Supplier's pool. Such reconciliation will normally be calculated during the summer months so that any differences between calendar month and billing cycle degree-day deficiencies are minimized. The actual billed transportation volumes for the reconciliation period will be determined by adding together the transportation quantities from the "Monthly Summary Billing Reports" for Supplier's pool. Such sum shall be adjusted for Unaccounted-for Gas Losses and converted from volumetric to thermal quantities.

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

Once the Company determines the extent of any imbalance for the reconciliation period, it will have the Supplier adjust its daily deliveries above or below the calculated Target Supply Quantities for some specified period of time until any imbalances are cured. However, in no case shall the Adjusted Target Supply Quantity be a negative number. Daily overrun/underrun calculations will be adjusted to take into account any such adjustments to Supplier's daily delivery requirements. The Company shall post any required daily delivery adjustment via the EBB at least two (2) days prior to the date that Supplier is required to begin its daily delivery adjustment. This imbalance may also be reconciled through a storage inventory adjustment or an adjustment to the Supplier's Rider EFBS bank balance if applicable.
6. During the months of November through March, Company shall reserve a portion of its vaporized propane capacity for Supplier Pools, based on the product of each Pool's then-applicable Maximum Daily Quantity and the percentage of the Company's total system design day needs forecasted to be met by vaporized propane for the upcoming months of November through March. The percentage reserved shall be applied as a reduction to the Maximum Daily Quantity that will result in the Supplier's Adjusted MDQ.

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

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

7. Company reserves the right to direct each Supplier to proportionally deliver, with respect to the Company's northern and southern interstate pipeline receipt points, the Supplier's daily pool requirements in addition to the quantities of gas intended for the Supplier's bank under Rider EFBS. For Suppliers who elect service under EFBS, the north/south split for volumes up to the TSQ shall be the same as the split for Suppliers who have elected FBS and system supply. Volumes in excess of the TSQ will be subject to north/south restrictions in accordance with the Company's ability to inject gas per its agreements with the storage service providers.
8. OFOs shall be issued by Company in those situations where it is necessary, in Company's sole judgement, for Supplier to deliver at specified receipt points and/or for Supplier to deliver at the Adjusted Target Supply Quantity in order for Company to: (a) protect the integrity of Company's gas system; (b) assure deliveries or gas supplies to all of Company's firm Customers; and/or (c) adhere to the various interstate pipeline companies' balancing requirements, as stated in their FERC approved gas tariffs under which Company is served. Suppliers who have elected Rider EFBS service shall be entitled to use such service, which shall be considered "on-system" deliveries to meet OFO requirements.

## ARTICLE VI

### Billing And Charges

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE VII

### Compensation For Gas Utilized by Company

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

## ARTICLE VIII

### Payment

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

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

## ARTICLE IX

### Interstate Pipeline Capacity

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

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



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

1. Supplier will be notified of any change to its released capacity by October 15<sup>th</sup> for winter capacity and by March 15<sup>th</sup> for summer capacity.
2. The assignment shall be structured as a release of capacity. The posted rate will be the rate for which the Company has contracted with the interstate pipeline. Any capacity with a discounted rate will be posted open to bids, with Supplier being the prearranged bidder. All other capacity will be posted at the pipeline's maximum rate with Supplier being the prearranged shipper.
3. The term of the release shall be on a seasonal basis, from November 1<sup>st</sup> through March 31<sup>st</sup> or April 1<sup>st</sup> through October 31<sup>st</sup>. Any incremental capacity changes will be handled by recalling the previously released capacity and re-releasing at the new amount.
4. Company shall assign interstate pipeline firm transportation capacity consistent with its delivery north/south allocation percentages and on a pro-rata basis to Company's total capacity for the designated pipelines of the parties may choose a mutually agreed-upon assigned capacity portfolio.
5. Capacity will be assigned to Supplier on a "recall and reput" basis. Company shall release this capacity utilizing the appropriate pipeline company's electronic bulletin board and Supplier shall execute the service agreements so generated by the pipelines five (5) days prior to the end of the month to enable Supplier to nominate gas suppliers under the service agreements for the following month. If Supplier fails to execute the service agreements the charges for the released capacity will be added to the Supplier's Pool Invoice for the month.
6. Prior to the capacity release process, Supplier shall comply with the appropriate pipeline's credit review and establish itself on the pipeline's Approved Bidders List (as defined in the interstate pipeline company's tariff).
7. Company, as releasing shipper under a recallable release, remains liable to the pipeline for reservation charges, and any applicable surcharges. Supplier will provide sufficient financial guaranty to the Company of its ability to pay such pipeline charges.
8. Company reserves the right to change the type of information required as well as the nomination deadline to comply with the requirements of the interstate pipeline companies.
9. There will be no restrictions on Supplier's use of the released capacity at such times that it is not required to deliver gas to Company's system.
10. Supplier may re-release all or a portion of the capacity to a Replacement Shipper who meets all the requirements to which the Supplier is subject including but not limited to, Company's right of recall. A re-release shall not relieve Supplier of its obligation under the provisions of the capacity release.

11. Supplier, after receiving such assignment shall pay the pipeline(s) directly for all charges associated with the use of released capacity, including (without limitation) demand charges, commodity charges, taxes, surcharges, fuel allowances, imbalance and overrun charges, and penalties.
12. Supplier shall not revise receipt and delivery points of the interstate pipeline company firm transportation capacity released by Company, without written consent from Company. Supplier will be responsible for operating the assigned capacity consistent with all the terms and conditions set forth in the tariffs of Company and the applicable pipeline companies.

## ARTICLE X

### Remedies

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

## ARTICLE XI

### Force Majeure

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

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

## ARTICLE XII

### Title to Gas

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

## ARTICLE XIII

### Limitation of Third Party Rights

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

## ARTICLE XIV

### Succession and Assignment

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

## ARTICLE XV

### Applicable Law and Regulations

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

ARTICLE XVI

Notices and Correspondence

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

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

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

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

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

Telephone notices to the Supplier shall be directed to ( ) \_\_\_\_\_.  
Fax notices to the Supplier shall be directed to ( ) \_\_\_\_\_.

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

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

WITNESS: Duke Energy Ohio, Inc.

\_\_\_\_\_ By \_\_\_\_\_

WITNESS: SUPPLIER

\_\_\_\_\_ By \_\_\_\_\_



**Duke Energy Kentucky  
Case No. 2010-00146  
Staff First Set Data Request  
Date Received: June 15, 2010**

**STAFF-DR-01-002**

**REQUEST:**

Why has Duke Kentucky not offered a retail choice program to small-volume customers similar to the Duke Ohio program?

**RESPONSE:**

The retail gas choice program of Duke Energy's regulated LDC in Ohio has evolved over the years based on the needs and demands of that specific LDC's stakeholders. Duke Energy Kentucky's LDC size and the environment in which it operates are different than that of Duke Energy Ohio. However, if Duke Energy Kentucky were to introduce a retail gas choice program, it would be designed similar to the program in Ohio.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky  
Case No. 2010-00146  
Staff First Set Data Request  
Date Received: June 15, 2010**

**STAFF-DR-01-003**

**REQUEST:**

Refer to the Martin Testimony, page 5, line 8–10, wherein Mr. Martin states that Duke Kentucky “does not dispute that some customers may be willing to pay more for gas in exchange for the right to choose a supplier and to lock in a fixed commodity price for a period of time.” Explain whether any of the Duke Companies have performed a survey addressing this issue and, if so, provide the name of the company that performed the survey, the date the survey was performed, and the results.

**RESPONSE:**

In October 2002, Shaw Strategic Marketing conducted interviews with customers of Duke Energy Kentucky in response to the Order dated June 7, 2002 in Case No. 2001-128. The surveys were conducted on October 15, 16 & 17, 2002, and the final report issued on October 31st of that year. Although this survey was conducted in regards to the Hedging Program rather than customer choice, one of the questions dealt with how much more the customer would be willing to pay to assure a stable price. The average response from Residential customers was \$9.25, and the average response from Commercial customers was \$8.33.

**PERSON RESPONSIBLE:** B. Mitchell Martin



RECEIVED


JUL 29 2010

PUBLIC SERVICE  
COMMISSION

VERIFICATION


State of Ohio            )  
                                  )    SS:  
County of Hamilton    )

The undersigned, Rocco D'Ascenzo, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Senior Counsel that on behalf of Duke Energy Kentucky, Inc. says that I have supervised the preparation of the responses to the foregoing responses to information request; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.

  
\_\_\_\_\_  
Rocco D'Ascenzo, Affiant

Subscribed and sworn to before me by Rocco D'Ascenzo on this 28<sup>th</sup> day of July, 2010.

**ADELE M. DOCKERY**  
Notary Public, State of Ohio  
My Commission Expires 01-05-2014

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 1-5-2014

VERIFICATION

State of Ohio            )  
                                  )     SS:  
County of Hamilton    )

The undersigned, B. Mitchell Martin, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Manager of City Gate Operations within the Gas Operations Department of Duke Energy Business Services, LLC; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.

  
\_\_\_\_\_  
B. Mitchell Martin, Affiant

Subscribed and sworn to before me by B. Mitchell Martin on this 27<sup>th</sup> day of July 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 11-19-10



**JULIE M. THOMPSON**  
Notary Public, State of Ohio  
My Commission Expires 11-19-10

VERIFICATION

State of Ohio            )  
                                  )  
County of Hamilton    )

The undersigned, William Don Wathen Jr., being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as General Manager Duke Energy & Vice President Rates-Ohio & Kentucky; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquiry.

  
\_\_\_\_\_  
William Don Wathen Jr., Affiant

Subscribed and sworn to before me by William Don Wathen Jr. on this 27<sup>th</sup> day of July 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



**ANITA M. SCHAFER**  
Notary Public, State of Ohio  
My Commission Expires  
November 4, 2014



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**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-001**

**REQUEST:**

With regard to your transportation tariffs. Please answer the following:

- A. Does it cost you more to deliver third party or supplier natural gas to a customer compared to the cost to deliver natural gas to a sales customer of the same size? If so, explain why in detail.
- B. Discuss whether you believe daily balancing or monthly balancing should be required of transportation customers and explain why, in detail?
- C. Excluding periods of OFO's and OMO's, please identify the financial harm to your firm sales customers that has occurred over the past 12 months because of daily imbalances of transportation customers?
- D. During the past 12 months, please identify each day when transportation customers' deliveries provided a financial credit or system benefit to firm sales customers?
- E. If you believe that larger transportation consumers should be subject to daily balancing and smaller transportation consumers subject to monthly balancing explain how you determine the amount of daily or monthly usage that requires daily or monthly balancing and explain.
- F. If there are charges for imbalances or penalties for imbalances describe and explain the reasoning for the penalties and describe the allocation of the generated imbalance penalty dollars.
- G. Identify any operational events that have occurred that caused you to determine that daily or monthly balancing is necessary. Provide sufficient event details to justify a decision based thereon.
- H. Discuss whether or not you believe that supplier "pooling" should be allowed by Kentucky natural gas utilities to allow suppliers to pool deliveries for balancing and penalty avoidance purposes. If not, explain in detail why not.

- I. Discuss the necessity for each penalty set forth in your transportation tariffs and the reasons underlying each of the penalty amounts.
- J. Identify and briefly explain the allocation of the generated penalty dollars.

**RESPONSE:**

- A. The costs would presumably mirror costs incurred to provide service to the Company's current transportation customers. The Company's cost of service study prepared in its most recent gas distribution rate case, Case No. 2009-00202, details all costs to provide such services to the Company's current transportation customers.
- B. Duke Energy Kentucky believes that a standardized natural gas transportation program (e.g., daily versus monthly balancing) should not be prescribed by the Commission or the Legislature, but rather believes that if a natural gas LDC decides to develop and implement this type of program, then the type of balancing provisions should be tailored to meet the needs of the LDC and its stakeholders.
- C. For every day that an imbalance exists between transportation customer usage and deliveries, firm sales customers are either harmed or benefited as the imbalance amount is either injected into or withdrawn from storage with the potential to increase or decrease costs that flow through the Gas Cost Adjustment (GCA). For example, if the LDC is withdrawing from storage on a particular day, but transportation customers are net long (positive imbalance), then the imbalance decreases the amount of withdrawal fees for that day. Alternatively, if the LDC is withdrawing from storage and transportation customers are net short, then the imbalance increases the amount of withdrawal fees for that day.
- D. Objection. Overbroad and unduly burdensome. Duke Energy Kentucky has not performed this detailed analysis. Without waiving said objection, please see response to item C.
- E. Please see response to item B.
- F. Duke Energy Kentucky imposes balancing charges on all volumes delivered to gas transportation customers. Monthly imbalance tolerances and end of month cash out charges apply to suppliers for volumes of gas that are either over-delivered or under-delivered outside of the monthly tolerance level. Since Duke Energy Kentucky is using its storage assets to provide the daily balancing, and Gas Cost Adjustment (GCA) customers paid for that storage, transportation customers therefore need to pay their share of the storage costs. Suppliers are able to avoid monthly imbalance charges by actively managing their deliveries to



stay within monthly tolerance levers and by trading imbalance amounts between a supplier's pools or with other suppliers.

On days when OFOs have been issued, any net imbalances not in compliance with the OFO result in unauthorized overrun or underrun charges. This charge is necessary to enforce compliance with system balancing and system integrity needs.

All balancing, monthly imbalance, and OFO imbalance charge amounts are allocated to Kentucky customers as credits to the GCA.

- G. Duke Energy Kentucky imposes monthly balancing through its transportation tariffs for system balancing purposes, to avoid exceeding storage injection or withdrawal limits, to avoid suppliers dumping gas on the Duke Energy Kentucky system when other LDCs have issued OFOs, and to minimize impact to firm sales customers.
- H. Duke Energy Kentucky believes that Kentucky natural gas utilities should be allowed to permit supplier pooling as part of any natural gas transportation program that a utility decides to design and implement. Combining gas deliveries and usage for all customers within a pool allows imbalances to be more easily monitored and managed at an aggregated level by a supplier rather than at the individual customer level. Aggregation of imbalances at the pool level can also allow individual customers to avoid imbalance charges and unauthorized usage penalties during OFO periods.
- I. Duke Energy Kentucky transportation tariffs include provisions for the flow-through of pipeline and gas supplier penalty amounts. Gas transportation customers shall reimburse Duke Energy Kentucky for any interstate pipeline penalty amounts incurred as a result of customers' unauthorized deliveries. Suppliers shall reimburse Duke Energy Kentucky for any interstate pipeline or gas supplier penalty amounts incurred as a result of a supplier's failure to respond to an OFO.
- J. All penalty amounts are allocated to Kentucky customers as credits to the Gas Cost Adjustment (GCA).

**PERSON RESPONSIBLE:** a. - William Don Wathen  
b-j. - B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-002**

**REQUEST:**

With regard to your operations pursuant to currently approved PSC tariffs, please respond to the following:

- A. For the period covering the past 24 months, identify the dates and duration of all operational flow orders, operational matching orders or other flow orders imposed by you.
- B. For all flow orders identified in (A) above, list the reason the flow order was imposed.

**RESPONSE:**

- A. See chart below that identifies dates, duration and type of all flow orders imposed over the past 24 months.
- B. See chart below which also includes the reason for the flow order.

OFO Dates	Duration	Type of OFO	Reason
Aug 29, 2008 10:00 am – Sep 02, 2008 10:00 am	4 days	Warm OFO	Reduced consumption over holiday weekend; risk of exceeding storage injection limits
Nov 01, 2008 10:00 am – Nov 07, 2008 10:00 am	6 days	Warm OFO	Warmer than normal weather; risk of exceeding storage injection limits
Jan 14, 2009 10:00 am – Jan 17, 2009 10:00 am	3 days	Cold OFO	Colder than normal temperatures; risk of exceeding storage withdrawal limits

Feb 04, 2009 10:00 am – Feb 05, 2009 10:00 am	1 day	Cold OFO	Colder than normal temperatures; risk of exceeding storage withdrawal limits
Jul 03, 2009 10:00 am – Jul 06, 2009 10:00 am	3 days	Warm OFO	Reduced consumption over holiday weekend; risk of exceeding storage injection limits
Aug 29, 2009 10:00 am – Sep 01, 2009 10:00 am	3 days	Warm OFO	Due to storage constraints and current levels of storage balances
Sep 05, 2009 10:00 am – Sep 08, 2009 10:00 am	3 days	Warm OFO	Reduced consumption over holiday weekend; risk of exceeding storage injection limits
Nov 07, 2009 10:00 am – Nov 10, 2009 10:00 am	3 days	Warm OFO	Due to warmer than normal temperatures projected for weekend and storage constraints
Nov 14, 2009 10:00 am – Nov 17, 2009 10:00 am	3 days	Warm OFO	Due to warmer than normal temperatures projected for weekend and storage constraints
Jan 01, 2010 10:00 am – Jan 05, 2010 10:00 am	4 days	Cold OFO	Colder than normal temperatures; risk of exceeding storage withdrawal limits
Jul 03, 2010 10:00 am – Jul 06, 2010 10:00 am	3 days	Warm OFO	Reduced consumption over holiday weekend; risk of exceeding storage injection limits

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-003**

**REQUEST:**

With regard to your operations pursuant to currently approved tariffs, please respond to the following:

- A. For the the past 24 months, have you waived any requirement set forth in PSC-approved tariffs for any Supplier? If so, identify any such waiver and the Supplier that received the waiver.
  
- B. For the the past 24 months, have you waived any requirement set forth in PSC-approved tariffs for any Affiliate? If so, identify any such waiver and the Affiliate that received the waiver.
  
- C. For the the past 24 months, have you waived any requirement set forth in PSC-approved tariffs for any consumer? If so, identify any such waiver and the consumer that received the waiver.

**RESPONSE:**

- A. No.
  
- B. Not applicable.
  
- C. No.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-004**

**REQUEST:**

With respect to the total gas load served by you, please respond to the following:

- A. Of the total load served by you, (i) Identify the quantity/extent of this load that is served by commodity that you obtain from any affiliate, (ii) Identify each affiliate from whom you obtain the commodity identified in (i) above; and, (ii) for the period covering the past 24 months, identify the quantity/extent of the commodity that you obtained from the Affiliate(s) identified in (ii) above.

**RESPONSE:**

- A.
- i. Intercompany transfers of natural gas supply are sometimes utilized to keep the LDCs operated by Duke Energy in balance and within limitations set by interstate pipelines. No other gas supply is currently being purchased from an affiliate.
  - ii. Natural gas is sometimes acquired from Duke Energy Ohio, Inc. and other times sold to Duke Energy Ohio, Inc. through intercompany transfers.
  - iii. The net of the intercompany transfers during the period July 1, 2008 through June 30, 2010 resulted in Duke Energy Kentucky purchasing 304,653 dth from Duke Energy Ohio. This represents approximately 1% of Duke Energy Kentucky's total system load.

**PERSON RESPONSIBLE:** B. Mitchell Martin





**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-005**

**REQUEST:**

With regard to your relationship with an unregulated Marketing Affiliate, if any, respond to the following if they are applicable:

- A. Identify each agreement and contract document between you and your Marketing Affiliate.
- B. Identify any written agreements and contracts that superseded or were successors to the agreement(s) Identified in (A) above.
- C. For the the years 2008, and 2009, (i) Identify the total revenues generated by your Marketing Affiliate under the agreement Identified in (A) above, (ii) Identify how the revenues Identified in (i) are allocated among the recipient(s) of that revenue, (iii) for the revenues Identified in (i), categorize and Identify the nature of the transaction that generated the revenues, such as, for example, revenues from utilized pipeline capacity transactions, revenues from commodity transactions, revenues from hedges and options, etc.

**RESPONSE:**

- A. None.
- B. See response to item A.
- C. See response to item A.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-006**

**REQUEST:**

With regard to your relationship with an “Asset Manager”, if any, respond to the following if they are applicable:

- A. Identify each agreement and contract document between you and your Asset Manager.
- B. Identify any written agreements and contracts that superseded or were successors to the agreement(s) Identified in (A) above.
- C. For the the years 2008, and 2009, (i) Identify both the total revenues paid to your Asset Manager and the total revenues received from you Asset Manager under the agreement Identified in (A) above, (ii) Identify how the revenues Identified in (i) are allocated among the recipient(s) of that revenue, (iii) for the revenues Identified in (i), categorize and Identify the nature of the transaction that generated the revenues, such as, for example, revenues from utilized pipeline capacity transactions, revenues from commodity transactions, revenues from hedges and options, etc.

**RESPONSE:**

- A. Each year since December 2001, Duke Energy Kentucky has entered into an agreement for portfolio management services with an asset manager. The agreements generally ran from November through October of each year and were with Mirant from 2001-2002, Cinergy Marketing & Trade from 2002-2006, Tenaska Marketing Ventures from 2006-2008 and 2009-2011, and BP Energy from 2008-2009.
- B. Each agreements listed in (A) above was the successor to the agreement in the previous year, except for the first agreement with Mirant.

- C.
- i. All payments were made from the Asset Manager to Duke Energy Kentucky. Revenues received from the asset manager were \$471,920 and \$871,750 in 2008 and 2009 respectively.
  - ii. All revenues were allocated to customers as credits to the Gas Cost Adjustment (GCA).
  - iii. Duke Energy Kentucky seeks bids for a bundled asset management payment from potential asset managers, and therefore does not know the nature of transactions utilized by the asset manager to generate revenue.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-007**

**REQUEST:**

Relative to your pipeline delivery requirements, please respond to the following:

- A. During the past 2 years, with regard to the pipeline delivery requirements, have you waived or otherwise altered specific compliance with the requirements for any supplier? If so, identify and fully describe any such waiver and/or alteration, and the supplier.
  
- B. During the past 2 years, and with regard to the pipeline delivery requirements, have you waived or otherwise altered specific compliance with the requirements for any consumer or customer? If so, identify and fully describe any such waiver and/or alteration, and the consumer/customer.
  
- C. During the past 2 years, and with regards to the pipeline delivery requirements, have you waived or otherwise altered specific compliance with the requirements for your Gas Marketing Affiliate, if any? If so, identify and fully describe any such waiver and/or alteration, and the Affiliate.

**RESPONSE:**

- A. No.
  
- B. No.
  
- C. Not applicable.

**PERSON RESPONSIBLE:** B. Mitchell Martin





**Duke Energy Kentucky  
Case No. 2010-00146  
STAND ENERGY First Set Data Request  
Date Received: July 15, 2010**

**STAND ENERGY-DR-01-008**

**REQUEST:**

Please respond to the following:

- a. Identify any item or document that you intend to or desire to use, refer to, rely on, sponsor, and/or introduce as evidence in the hearing in this matter(s).

**RESPONSE:**

A final decision regarding which evidence will be presented has not been made. The Company will use, refer to and rely on the Direct Testimony of Mitch Martin.

**PERSON RESPONSIBLE:**

Rocco O. D'Ascenzo, Senior Counsel.



**Duke Energy Kentucky**  
**Case No. 2010-00146**  
**STAND ENERGY First Set Data Request**  
**Date Received: July 15, 2010**

**STAND ENERGY-DR-01-009**

**REQUEST:**

- A. How many public or private school systems in your Kentucky territory have contracted for gas transportation service?
- B. What percentage of your system gas supplies for Duke Kentucky are produced in Kentucky?

**RESPONSE:**

- A. In the past 24 months, approximately 20 individual schools have contracted for gas transportation service in our Kentucky service territory.
- B. Duke Energy Kentucky does not purchase its natural gas supplies directly at the point of production. Rather, Duke Energy Kentucky purchases its natural gas at pooling points on various interstate pipeline systems, so it is very difficult to determine the amount of natural gas purchased that was actually produced in Kentucky.

**PERSON RESPONSIBLE:** B. Mitchell Martin

RECEIVED  
JUL 29 2010  
PUBLIC SERVICE  
COMMISSION

VERIFICATION

State of Ohio            )  
                                  )    SS:  
County of Hamilton    )

The undersigned, B. Mitchell Martin, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Manager of City Gate Operations within the Gas Operations Department of Duke Energy Business Services, LLC; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.

B. Mitchell Martin  
B. Mitchell Martin, Affiant

Subscribed and sworn to before me by B. Mitchell Martin on this 21<sup>st</sup> day of July 2010.

Julie M. Thompson  
NOTARY PUBLIC

My Commission Expires: 11-19-10



JULIE M. THOMPSON  
Notary Public, State of Ohio  
My Commission Expires 11-19-10



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**Duke Energy Kentucky  
Case No. 201-00146  
VECTREN/IGS First Set Data Request  
Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-001**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

In preparing your testimony, please identify with whom you discussed the issue of retail competition?

**RESPONSE:**

The issue of retail competition was discussed with members of Duke Energy Kentucky's gas leadership team and legal department.

**PERSON RESPONSIBLE:** B. Mitchell Martin





**Duke Energy Kentucky  
Case No. 201-00146  
VECTREN/IGS First Set Data Request  
Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-002**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

Did Duke Energy have a meeting of the board of directors at which Duke Energy adopted its position that retail choice should not be mandated for LDC's?

- a. If so, please produce any board meeting notes or any other documents in Duke Energy's possession in regards to its position?

**RESPONSE:**

No.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky**  
**Case No. 201-00146**  
**VECTREN/IGS First Set Data Request**  
**Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-003**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

Did you personally attend meetings at which Duke Energy adopted its position that LDC's should not be mandated to allow retail choice?

- a. Additionally, please identify at what level of the Duke Energy corporation the decision was made, what individuals rendered the decision and what facts they relied on rendering the decision?

**RESPONSE:**

Yes.

- a. Please see response to VECTREN/IGS-DR-01-001.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky  
Case No. 201-00146  
VECTREN/IGS First Set Data Request  
Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-004**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

Please provide copies of all work papers or data used to complete your testimony.

**RESPONSE:**

The tariffs of Duke Energy Ohio, an affiliate of Duke Energy Kentucky, and its experience with Duke Energy Ohio's gas customer choice program were used to complete the testimony. Duke Energy Ohio's tariffs can be easily accessed at <http://www.duke-energy.com/rates/ohio/gas.asp>.

**PERSON RESPONSIBLE:** B. Mitchell Martin



**Duke Energy Kentucky  
Case No. 201-00146  
VECTREN/IGS First Set Data Request  
Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-005**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

What studies, evidence or documents did Duke Energy rely upon in determining its position? Please produce copies of these documents, if any.

**RESPONSE:**

Duke Energy relied upon its past experience in implementing its customer choice program in Ohio to establish its position for Duke Energy Kentucky.

**PERSON RESPONSIBLE:** B. Mitchell Martin





**Duke Energy Kentucky  
Case No. 201-00146  
VECTREN/IGS First Set Data Request  
Date Received: July 15, 2010**

**VECTREN/IGS-DR-01-006**

**REQUEST TO WITNESS B. MITCHELL MARTIN:**

Please explain and reconcile Duke Energy's position in this proceeding with the fact that a Duke Energy affiliate company engages in retail gas marketing in other utility markets.

**RESPONSE:**

Duke Energy Ohio, Duke Energy Kentucky's parent company, is a combination electric and natural gas utility operating in the state of Ohio. Ohio has retail choice for both gas and electric service. Duke Energy Retail Sales provides competitive retail electric service in Ohio and is registered with the Public Utilities Commission of Ohio to provide natural gas service. Duke Energy Retail Sales is a separate and distinct company operating in Ohio. Consistent with Duke Energy's standards of conduct with respect to marketing affiliates, Duke Energy Kentucky's position in this proceeding was not influenced by the existence of its non-regulated gas marketing affiliate.

**PERSON RESPONSIBLE:** B. Mitchell Martin

VERIFICATION


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JUL 29 2010

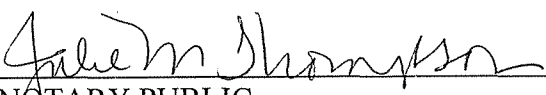
PUBLIC SERVICE  
COMMISSION

State of Ohio )  
 ) SS:  
County of Hamilton )

The undersigned, B. Mitchell Martin, being duly sworn, deposes and says that I am employed by the Duke Energy Corporation affiliated companies as Manager of City Gate Operations within the Gas Operations Department of Duke Energy Business Services, LLC; that on behalf of Duke Energy Kentucky, Inc., I have supervised the preparation of the responses to the foregoing responses to information requests; and that the matters set forth in the foregoing response to information requests are true and accurate to the best of my knowledge, information and belief after reasonable inquire.

  
\_\_\_\_\_  
B. Mitchell Martin, Affiant

Subscribed and sworn to before me by B. Mitchell Martin on this 27<sup>th</sup> day of July 2010.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires: 11-19-10



JULIE M. THOMPSON  
Notary Public, State of Ohio  
My Commission Expires 11-19-10

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**Duke Energy Kentucky**  
**Case No. 2010-146**  
**RESA First Set Data Request**  
**Date Received: July 19, 2010**

**RESA-DR-01-001**

**REQUEST:**

Identify every state in which Duke Kentucky or an affiliate of Duke Kentucky offers retail gas service, and for each such state, identify the name of the company offering retail gas service, and the specific types of service offered.

**RESPONSE:**

Duke Energy Kentucky and its affiliate Duke Energy Ohio offer retail gas service in Kentucky and Ohio, respectively. Duke Energy Kentucky offers firm natural gas sales service, which is comprised of commodity gas supply and local delivery service, to residential customers (Rate RS) and non-residential customers (Rate GS) and also offers firm requirements transportation service to large volume non-residential customers using over 2,000 Mcf/year (Rate FT-L).

Duke Energy Ohio offers firm natural gas sales service, which is comprised of commodity gas supply and local delivery service, to residential customers (Rate RS), low income residential customers (Rate RSLI), small volume non-residential customers (Rate GS-S), and larger volume non-residential customers (Rate GS-L). Duke Energy Ohio also offers firm requirements transportation service to residential customers (Rate RFT), low income residential customers (Rate RFTLI), small volume non-residential customers (Rate FT-S), and larger volume non-residential customers (Rate FT-L).

**PERSON RESPONSIBLE:** B. Mitchell Martin